

Article 24.  
Trust Companies and Interstate Trust Business.  
Part 1. Definitions.

**§ 53-301. Definitions.**

(a) Except as otherwise provided in this Article, or when the context clearly indicates that a different meaning is intended, the following definitions shall apply throughout this Article:

- (1) "Account" means the client relationship established with a trust institution involving the transfer of real or personal property to the trust institution or the assumption of duties by the trust institution concerning real or personal property.
- (2) "Act as a fiduciary" means:
  - a. To (i) act as trustee under a written instrument or by judicial appointment or order; (ii) receive money or other property as trustee for investment or reinvestment in real or personal property; (iii) act as custodian or custodial trustee under a gifts to minors act, a transfers to minors act, a custodial trust act, or similar statute; (iv) act as personal representative of the estate of a deceased person; (v) act as trustee, guardian, or conservator for the person or estate of an incompetent such as a minor or incapacitated person, or in other circumstances in which a guardian may be appointed; or (vi) act in a capacity similar to one listed in (i) through (v), however such capacity may be designated under applicable law or governing instrument; or
  - b. To possess, purchase, sell, safekeep, or otherwise manage or administer property in any other fiduciary capacity.
- (3) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with another company.
- (3a) "Affiliate transfer" means a transfer of an account pursuant to Part 7 of this Article by one trust institution affiliate of that trust institution.
- (4) "Authorized trust institution" means any State trust company and any trust office or representative trust office of a trust institution located in this State that is not a bank.
- (5) "Bank" has the meaning set forth in 12 U.S.C. § 1813(a)(1), except that "bank" does not include a trust company.
- (6) "Bank supervisory agency" means:
  - a. Any agency of another state or a home country with primary responsibility for chartering or supervising a trust institution; and
  - b. The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, a Federal Reserve Bank acting in a supervisory capacity over any bank or bank holding company, the Office of Thrift Supervision, and any successor to these agencies.
- (6a) "Board of directors" means the governing body of a company.
- (7) "Branch" has the meaning set forth in G.S. 53C-1-4(11).
- (8) "Charter" means a charter issued to a State trust company by the Commissioner or a charter, license, or other authority issued by the Commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its

home state or home country, and the issuance of the charter, license, or other authority.

- (9) "Client" means a person to whom a trust institution owes a duty or obligation under an account.
- (10) "Commission" means the North Carolina State Banking Commission.
- (11) "Commissioner" means the Commissioner of Banks for the State of North Carolina.
- (12) "Company" includes a bank, trust company, corporation, partnership, association, limited liability company, trust, business trust, joint venture, foundation, pool, syndicate, unincorporated organization, or other form of entity not specifically listed herein.
- (13) "Control," with respect to a State trust company, means:
  - a. The ownership of or ability or power to vote directly, acting through one or more other persons, or otherwise indirectly, ten percent (10%) or more of the outstanding shares of a class of voting securities of the State trust company;
  - b. The ability to control, directly or indirectly, the election of a majority of the board of the State trust company; or
  - c. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the State trust company.
- (14) "Debt security" means a marketable obligation evidencing indebtedness of a company in the form of a bond, note, debenture, or other debt instrument.
- (15) "Depository institution" means any company within any of the definitions of "insured depository institution" set forth in 12 U.S.C. § 1813(c).
- (15a) "Director" means a member of the board of directors.
- (16) "Equity capital" means the amount by which the total assets of a State trust company exceed its total liabilities.
- (17) "Equity security" means:
  - a. Stock, other than adjustable rate preferred stock and money market (auction rate) preferred stock;
  - b. A certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate;
  - c. A security immediately convertible at the option of the holder without payment of significant additional consideration into a security described by this subdivision;
  - d. A security carrying a warrant or right to subscribe to or purchase a security described by this subdivision; and
  - e. A certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision that evidences an existing or contingent equity ownership interest.
- (18) "Executive officer" means an officer of a company who is named an executive officer by the company or who participates in major policy-making functions of the company.
- (19) "Federally chartered savings association" means a company described in 12 U.S.C. § 1813(b)(2).

- (20) "Fiduciary record" means a matter written, transcribed, recorded, received, or otherwise in the possession or control of a trust institution, whether in physical, electronic, magnetic, or other form, that preserves information concerning an account or a client.
- (21) "Foreign bank" means a foreign bank, as defined in 12 U.S.C. § 1813(s)(1), except for a bank organized under the laws of a territory of the United States.
- (22) "Foreign trust institution" means a trust institution, other than a foreign bank, chartered in a foreign country.
- (23) "Hazardous condition" with respect to a trust institution means:
  - a. A refusal by the trust institution to permit examination of its books, papers, accounts, records, or affairs by the Commissioner or a duly appointed or authorized examiner of the Commissioner, or a refusal by the officers or directors of a trust institution to be examined under oath regarding its affairs;
  - b. A material violation by a trust institution of a condition of its chartering or an agreement entered into between the trust institution and the Commissioner; or
  - c. A circumstance or condition in which an unreasonable risk of loss is threatened to clients, creditors, or shareholders of a trust institution because the trust institution:
    - 1. Has equity capital that is, or is in substantial danger of becoming, inadequate for the safe and sound conduct of its business without regard to whether it is, or is in substantial danger of becoming, insolvent;
    - 2. Has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;
    - 3. Violates or fails to comply with this Article, another statute or rule applicable to trust institutions, or any duly issued order of the Commissioner;
    - 4. Is in a condition that renders the continuation of a particular business practice hazardous to its clients, creditors, or shareholders; or
    - 5. Conducts business in an unsafe or unsound manner, which includes conducting business with:
      - I. Materially inexperienced or inattentive management;
      - II. Dangerous operating practices;
      - III. Materially infrequent or inadequate audits;
      - IV. Materially deficient administration of assets in relation to the volume and character of the assets it administers or the trust institution's responsibility for such assets;
      - V. Materially frequent or serious failures to adhere to sound administrative practices;
      - VI. Materially frequent or serious violations of applicable laws, rules, or terms of instruments governing accounts; or
      - VII. Materially serious self-dealing or conflicts of interest.

- (24) "Home country" means a foreign country in which a foreign trust institution is chartered.
- (25) "Home country regulator" means the bank supervisory agency with primary responsibility for chartering and supervising a foreign trust institution.
- (26) "Home state" means:
  - a. With respect to a federally chartered savings association and a national bank, the state in which the institution maintains its principal office;
  - b. With respect to a foreign bank, the home state of the foreign bank as determined in accordance with the International Banking Act of 1978, 12 U.S.C. §§ 3101, et seq., and Article 18A of this Chapter or, if there is no such home state, the state in which the foreign bank maintains its principal office in the United States; and
  - c. With respect to any other trust institution, the state or home country which chartered the institution.
- (27) "Home state regulator" means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.
- (28) "Host state" means a state other than the home state of a trust institution, or a foreign country, in which the trust institution maintains or seeks to establish or acquire and maintain a trust office or representative trust office.
- (29) "Initial capital" means the amount of equity capital required for approval of a charter pursuant to G.S. 53-337.
- (30) "Insolvent," with respect to a State trust company, means a circumstance or condition in which a State trust company:
  - a. Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, without regard to whether its assets exceed its liabilities;
  - b. Has equity capital less than one-fourth of its initial capital, except as otherwise specified by the Commissioner; or
  - c. Has purported to make a voluntary assignment of its assets for the benefit of creditors or to take any action for protection against creditors under any bankruptcy or insolvency law.
- (31) "Jeopardized" means insolvent, in a hazardous condition, or in such other condition as the Commissioner determines warrants the use of procedures set forth in this Article relating to jeopardized State trust companies.
- (32) "License", with respect to a State trust company, means the authority granted by the Commissioner pursuant to G.S. 53-160.
- (33) "National bank" means a bank chartered under 12 U.S.C. § 21.
- (34) "Office" with respect to a trust institution means its principal office, a trust office, or a representative trust office, but not a branch. With respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the term "office" also means the registered office.
- (35) "Out-of-state trust institution" means a trust institution that is neither a State trust institution nor a foreign trust institution.
- (36) "Person" means an individual or a company.
- (37) "Principal office" means:

- a. With respect to a State trust company, a location, registered with the Commissioner as the State trust company's principal office, at which:
    - 1. The State trust company does business; and
    - 2. At least one executive officer of the State trust company maintains a customary place of work; and
  - b. With respect to a trust institution other than a State trust company, its principal place of business.
- (38) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, ten percent (10%) or more of the outstanding shares of any class of voting securities of a company.
- (39) "Private trust company" means a State trust company that is organized to engage in business with one or more family members and does not transact business with the general public, as defined in G.S. 53-363.
- (39a) "Registered office" means a registered office as described in G.S. 55D-30.
- (40) "Representative trust office" means an office at which a trust institution engages in trust marketing, but not trust business.
- (41) "Savings association" has the meaning set forth in 12 U.S.C. § 1813(b)(1).
- (42) "State" means any state of the United States, the District of Columbia, and any territory of the United States.
- (43) "State bank" means:
  - a. A bank organized under the provisions of this Chapter and authorized to act as a fiduciary by this State or
  - b. A foreign bank lawfully doing business in this State pursuant to Article 18A of this Chapter.
- (44) "State savings association" means a savings association organized under the laws of this State and authorized to act as a fiduciary pursuant to Chapter 54B or Chapter 54C of the General Statutes.
- (45) "State trust company" means a company organized under the provisions of this Article and a trust company previously organized under other provisions of Chapter 53 of the General Statutes to operate only as a trust company and not as a commercial bank.
- (46) "State trust company facility" has the meaning set forth in G.S. 53-340.
- (47) "State trust institution" means a trust institution organized under the laws of, or having its principal office in, this State.
- (48) "Subsidiary" means a company that is controlled by another company, and includes a subsidiary of a subsidiary.
- (49) "Territory of the United States" means any geographic area over which the United States exercises sovereignty.
- (49a) "Transferring trust institution" means a trust institution that proposes to make, or does make, an affiliate transfer.
- (49b) "Transferee trust institution" means a trust institution to which an affiliate transfer is proposed to be made, or is made.
- (50) "Trust business" means acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331.

- (51) "Trust company" means a trust institution that is neither a depository institution nor a foreign bank.
- (52) "Trust institution" means any company lawfully acting as a fiduciary in a state or in a foreign country.
- (53) "Trust marketing" means the holding out by a company to the public by advertising, solicitation, or other means that the company is available to act as a fiduciary.
- (54) "Trust office" means an office, other than the principal office, through which a trust institution acts as a fiduciary, including, with respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the registered office.
- (55) "Unauthorized trust activity" means:
  - a. Engaging in trust business within this State by a company other than one identified in G.S. 53-303; or
  - b. Maintenance of a representative trust office by an out-of-state trust institution without approval from or in violation of an order issued by the Commissioner.

(b) These definitions shall be liberally construed to accomplish the purposes of this Article. The Commission may adopt other definitions to accomplish the purposes of this Article.

(c) References to statutory laws of North Carolina and of the United States of America shall be deemed to refer to recodified, amended, predecessor, or successor statutes. References to agencies of North Carolina and of the United States of America shall be deemed to refer to predecessor or successor agencies. (2001-263, s. 1; 2005-269, ss. 1, 2, 3; 2005-274, s. 1; 2011-339, s. 8; 2012-56, s. 29.)

## Part 2. Multistate Trust Institutions Act.

### Subpart A. General.

#### **§ 53-302. Title and purposes.**

- (a) This Part may be cited as the Multistate Trust Institutions Act.
- (b) It is the express intent of this Part to permit trust institutions to engage in trust business on a multistate and international basis subject to the provisions of this Part. (2001-263, s. 1.)

### Subpart B. Companies Authorized to Engage in Trust Business.

#### **§ 53-303. Companies authorized to engage in trust business.**

- (a) No company shall engage in trust business in this State except:
  - (1) A State trust company;
  - (2) A State bank;
  - (3) A State savings association;
  - (4) A national bank having its principal office in this State;
  - (5) A federally chartered savings association having its principal office in this State;
  - (6) An out-of-state trust institution in accordance with and subject to the provisions of Subpart D of this Part;
  - (7) A foreign trust institution in accordance with and subject to the provisions of Subpart E of this Part; or

- (8) A company otherwise authorized to engage in trust business or to act in a particular capacity described in G.S. 53-331(b)(2) under the laws of this State or of the United States.

(b) No company shall engage in unauthorized trust activity, and all companies shall engage in trust business in accordance with and subject to all applicable laws of this State. (2001-263, s. 1.)

**§ 53-304. Activities not requiring a charter, license, or approval.**

Notwithstanding any other provision of this Article, a company does not act as a fiduciary; engage in trust business or in any other business requiring a charter, license, or approval under the provisions of this Chapter; or engage in unauthorized trust activity by:

- (1) Acting in a manner authorized by law as an agent of a trust institution with respect to any activity that is not unauthorized trust activity;
- (2) Rendering legal services in a manner authorized by the North Carolina State Bar;
- (3) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;
- (4) Receiving and distributing rents and proceeds of sales of real property in a manner authorized by the North Carolina Real Estate Commission;
- (5) Engaging in securities transactions or providing investment advisory services in accordance with applicable securities laws;
- (6) Engaging in the issuance, sale, or administration of an insurance or annuity product in a manner authorized by the North Carolina Department of Insurance;
- (7) Engaging in the lawful sale of prepaid funeral benefits in accordance with and subject to Article 13D of Chapter 90 of the General Statutes or engaging in the lawful business of a perpetual care cemetery corporation in accordance with and subject to Chapter 65 of the General Statutes;
- (8) Acting as trustee under a voting trust;
- (9) Acting as fiduciary by an organization described in paragraphs (1) through (5) of section 170(c) or section 501(c) of the Internal Revenue Code of 1986, as amended, with respect to endowment funds or other funds owned, controlled, provided to, or otherwise made available to the organization with respect to its exempt purposes (including, without limitation, trust funds in which the organization has a beneficial interest).
- (10) Engaging in other activities expressly excluded from the application of this Article by rule, order, or declaratory ruling of the Commissioner;
- (11) Rendering services as a certified public accountant in a manner authorized by the North Carolina State Board of Certified Public Accountant Examiners;
- (12) Provided the company is a trust institution and is not barred by order of the Commissioner from engaging in trust marketing in this State pursuant to G.S. 53-321(b), (i) marketing or soliciting in this State with respect to acting as a fiduciary outside this State; (ii) delivering money or other intangible assets to, and receiving money or other intangible assets for administration outside this State from, a person in this State; or (iii) accepting an account outside this State or otherwise engaging in trust business outside this State; or

- (13) Receiving, holding, administering, or distributing real or personal property for or on behalf of another person solely incidental to a lawfully conducted activity or transaction. (2001-263, s. 1.)

**§ 53-305. Trust business of State trust institution.**

A State trust institution may conduct any activities outside this State that are permissible for a trust institution in the host state, subject to the laws of this State and, in the case of a State bank or a State trust company, subject to rules, orders, or declaratory rulings of the Commissioner. (2001-263, s. 1.)

**§ 53-306. Trust business of out-of-state trust institution.**

An out-of-state trust institution that establishes or acquires and maintains one or more trust offices or representative trust offices in this State under the provisions of this Part or that maintains one or more branches in this State may, subject to the provisions of this Part, conduct any activity through such a trust office, representative trust office, or branch that a State trust company or a State bank is authorized to conduct through a trust office, representative trust office, or branch under the laws of this State. (2001-263, s. 1; 2005-269, s. 4.)

**§ 53-307. Trust business of foreign trust institution.**

A foreign trust institution that establishes or acquires and maintains one or more trust offices in this State under the provisions of this Part may, subject to the provisions of this Part, also establish or acquire one or more representative trust offices and conduct any activity through the trust offices or representative trust offices that a State trust company is authorized to conduct through trust offices or representative trust offices under the laws of this State. (2001-263, s. 1; 2005-269, s. 5.)

**§ 53-308. Name of trust institution.**

Subject to other provisions of applicable law, a person may register or reserve any name with the Secretary of State in connection with engaging or proposing to engage in trust business or trust marketing in this State, except that the Commissioner may determine that a name registered or reserved is potentially misleading to the public and require the use of a name that is not potentially misleading. (2001-263, s. 1.)

**§ 53-309. Trust deposits of authorized trust institutions.**

- (a) Subsection (b) of G.S. 36A-63 shall not apply to an authorized trust institution.
- (b) In the absence of a contrary provision in an instrument governing an account, an authorized trust institution may deposit client funds with itself to satisfy its duties under G.S. 36A-63(a) provided:
  - (1) It maintains, as collateral for the deposits, a separate fund of readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five percent (125%) of the funds so deposited;
  - (2) The separate fund is designated as such; and
  - (3) The separate fund either is maintained under the control of another trust institution, a bank, or a government agency, or is held by the authorized trust institution for the benefit of the accounts with deposits secured by the separate fund; provided, that the Commissioner may require such a separate fund of an



authorized trust institution that is insolvent, in a hazardous condition, or jeopardized, to be held by a separate trust institution or bank approved by the Commissioner.

(c) An authorized trust institution may make periodic withdrawals from or additions to the separate fund required by subsection (b) of this section as long as the required value is maintained. Income from the separate fund belongs to the authorized trust institution.

(d) Collateral is not required for a deposit under subsection (b) of this section to the extent the deposit is insured by the Federal Deposit Insurance Corporation. (2001-263, s. 1.)

#### Subpart C. State Trust Company Trust Officers and Representative Trust Offices.

##### **§ 53-310. Offices of State trust companies.**

(a) A State trust company may engage in trust business or trust marketing through its principal office and through each trust office as permitted by this Part.

(b) A State trust company may engage in trust marketing through a representative trust office as permitted by this Part.

(c) A State trust company may engage in trust business and trust marketing through out-of-state trust offices or representative trust offices to the same extent permitted for trust institutions located in the host state through which those out-of-state trust offices or representative trust offices are located, subject to the laws of this State and as provided by rules, orders, or declaratory rulings of the Commissioner. (2001-263, s. 1; 2005-269, s. 6.)

##### **§ 53-311. State trust company principal office.**

(a) Each State trust company is required to maintain a principal office in this State and to register that principal office with the Commissioner by setting forth the current street address and telephone number of the principal office.

(b) Each executive officer at a principal office is an agent of the State trust company for service of process.

(c) Before changing the location of its principal office, a State trust company shall file a notice with the Commissioner setting forth the name of the State trust company, the current street address and telephone number of its principal office, the street address, and telephone number if known, of the proposed new principal office, and a copy of the resolution adopted by the board of directors or duly authorized committee of the board of directors of the State trust company authorizing the change. If the State trust company is unable to provide the Commissioner with the telephone number for the proposed new principal office at the time of the notice, it shall do so immediately after beginning to operate at the new principal office location.

(d) The change of principal office shall take effect on the thirty-first day following the date the Commissioner receives the notice described in subsection (c) of this section, unless prior to the thirty-first day following receipt of the notice, the Commissioner (i) establishes an earlier or later date, or (ii) notifies the State trust company that the notice raises issues that require additional information or additional time for analysis, or (iii) disapproves the proposed trust office or representative trust office.

(e) If the Commissioner gives a notification described in subsection (d) of this section, the State trust company may change the location of its principal office only on approval by the Commissioner. The Commissioner may disapprove the change of location if the Commissioner finds that the change will adversely affect the safe and sound operation of the State trust company. (2001-263, s. 1.)

**§ 53-312. Trust offices; representative trust offices.**

(a) Before establishing or acquiring and maintaining a trust office or representative trust office in this State, a State trust company shall file a notice with the Commissioner, in the form required by the Commissioner, setting forth the name of the State trust company, the location of the proposed trust office or representative trust office, and whether the office will be a trust office or a representative trust office. The State trust company also shall furnish a copy of the resolution adopted by the board of directors or duly authorized committee of the board of directors of the State trust company authorizing the trust office or representative trust office and shall pay the filing fee, if any, set by rule.

(b) The State trust company may commence business at the trust office or representative trust office on the thirty-first day after the date the Commissioner receives the notice, unless the Commissioner (i) establishes an earlier or later date; (ii) notifies the State trust company that the notice raises issues that require additional information or additional time for analysis; or (iii) disapproves the proposed trust office or representative trust office.

(c) If the Commissioner gives a notification described in subsection (b) of this section, the State trust company may establish the trust office or representative trust office only on approval by the Commissioner. The Commissioner may disapprove the proposed trust office or representative trust office if the Commissioner finds that the State trust company lacks sufficient resources to undertake the proposed expansion without adversely affecting its safety or soundness. (2001-263, s. 1.)

**§ 53-313. Out-of-state trust offices and representative trust offices.**

(a) Before establishing or acquiring and maintaining a trust office or representative trust office in a host state, a State trust company shall file a notice with the Commissioner, in the form required by the Commissioner, that sets forth the name of the State trust company, the location of the proposed trust office or representative trust office, whether the office will be a trust office or a representative trust office, and whether the laws of the host state permit the trust office or representative trust office to be maintained by the State trust company. The State trust company also shall furnish a copy of the resolution adopted by the board of directors or duly authorized committee of the board of directors of the State trust company authorizing the out-of-state trust office or representative trust office and shall pay the filing fee, if any, set by rule.

(b) The State trust company may commence business at the trust office or representative trust office on the thirty-first day following the date the Commissioner receives the notice, unless the Commissioner (i) establishes an earlier or later date; (ii) notifies the State trust company that the notice raises issues that require additional information or additional time for analysis; or (iii) disapproves the proposed trust office or representative trust office.

(c) If the Commissioner gives a notification described in subsection (b) of this section, the State trust company may establish the trust office or representative trust office only on approval by the Commissioner. The Commissioner may disapprove the proposed trust office or representative trust office if the Commissioner finds that the State trust company lacks sufficient resources to undertake the proposed expansion without adversely affecting its safety or soundness. (2001-263, s. 1.)

Subpart D. Out-of-State Trust Institution Trust Offices and Representative Trust Offices.

**§ 53-314. Trust business through a branch or trust office.**

An out-of-state trust institution may engage in trust business in this State only if it (i) maintains a trust office in this State as permitted by this Subpart, (ii) was allowed to maintain a trust office in this State under laws, or rules or orders of the Commissioner in effect prior to the date of enactment of this Article, but only to the extent allowed and subject to all limitations and conditions imposed under those laws, rules, or orders, or (iii) is a depository institution that maintains a branch in this State. (2001-263, s. 1; 2005-269, s. 7.)

**§ 53-315. Establishing an interstate trust office.**

An out-of-state trust institution that obtains approval from the Commissioner in accordance with the provisions of this Subpart may establish and maintain a trust office in this State; provided that the Commissioner shall not grant that approval unless the home state of the out-of-state trust institution permits a State trust institution to establish and maintain a trust office in that home state under restrictions not materially greater than those imposed by this Article. (2001-263, s. 1.)

**§ 53-316. Acquiring an interstate trust office.**

An out-of-state trust institution that obtains approval from the Commissioner in accordance with the provisions of this Subpart may acquire and maintain a trust office in this State; provided that the Commissioner shall not grant that approval unless the home state of the out-of-state trust institution permits a State trust institution to acquire and maintain a trust office in that home state under restrictions not materially greater than those imposed by this Article. (2001-263, s. 1.)

**§ 53-317. Requirement of notice.**

Before establishing or acquiring and maintaining a trust office in this State, an out-of-state trust institution shall provide, or cause its home state regulator to provide, notice to the Commissioner, in the form required by the Commissioner, along with copies of any applications, notices, or similar filings made with the home state regulator regarding the trust office. The notice shall be preceded or accompanied by:

- (1) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with all applicable requirements of Article 15 of Chapter 55 of the General Statutes;
- (2) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with any applicable requirements of its home state regulator for maintenance of capital, for expansion within the borders of the home state, and for acquiring or establishing and maintaining each trust office in this State;
- (3) Evidence satisfactory to the Commissioner that the out-of-state trust institution is not in a hazardous condition;
- (4) Unless waived by the Commissioner, a copy of the resolution adopted by the board of directors of the out-of-state trust institution (or similar governing body or a duly-authorized committee thereof) authorizing the trust office; and
- (5) Payment of any fee set by rule. (2001-263, s. 1; 2005-269, s. 8.)

**§ 53-318. Action on notice.**

(a) The out-of-state trust institution may commence business in this State through the trust office on the sixty-first day following the date the Commissioner receives the notice described in G.S. 53-317 unless the Commissioner, within 60 days of receiving the notice:

- (1) Specifies an earlier or later date for commencing business,

- (2) Extends the period of review on a determination that the notice raises issues that require additional information or additional time for analysis; or
- (3) Disapproves the proposed trust office.

(b) If the Commissioner gives a notification described in subdivision (2) of subsection (a) of this section, the out-of-state trust institution may establish the trust office only on approval by the Commissioner. The Commissioner may disapprove the proposed trust office if the Commissioner finds that the out-of-state trust institution lacks sufficient resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the requirements of G.S. 53-315 or G.S. 53-316 have not been satisfied. (2001-263, s. 1; 2005-269, s. 9.)

**§ 53-319. Additional trust offices; representative trust offices.**

(a) An out-of-state trust institution that maintains a trust office in this State may establish or acquire and maintain additional trust offices or one or more representative trust offices in this State to the same extent that a State trust institution may establish or acquire and maintain trust offices or representative trust offices in this State and shall follow the procedures for establishing or acquiring and maintaining trust offices or representative trust offices set forth in G.S. 53-312.

(b) An out-of-state trust institution that does not maintain a trust office in this State shall file a notice with the Commissioner, in the form required by the Commissioner, before establishing or acquiring a representative trust office in this State. The notice shall be preceded or accompanied by:

- (1) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with all applicable requirements of Article 15 of Chapter 55 of the General Statutes;
- (2) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with any applicable requirements of its home state regulator for maintenance of capital, for expansion within the borders of the home state, and for acquiring or establishing and maintaining each representative trust office in this State;
- (3) Evidence satisfactory to the Commissioner that the out-of-state trust institution is not in a hazardous condition;
- (4) Unless waived by the Commissioner, a copy of the resolution adopted by the board of directors of the out-of-state trust institution (or similar governing body or a duly authorized committee thereof) authorizing the representative trust office;
- (5) The proposed location of each proposed representative trust office; and
- (6) Payment of any fee set by rule.

(c) The out-of-state trust institution may commence business at the representative trust office on the thirty-first day following the date the Commissioner receives the notice described in subsection (b) of this section, unless the Commissioner, within 30 days of receiving the notice:

- (1) Specifies an earlier or later date for commencing business;
- (2) Extends the period of review on a determination that the notice raises issues that require additional information or additional time for analysis; or
- (3) Disapproves the proposed representative trust office.

(d) If the Commissioner gives a notification described in subdivision (2) of subsection (c) of this section, the out-of-state trust institution may commence business at the representative trust office only on approval by the Commissioner. The Commissioner may disapprove the

representative trust office if the Commissioner finds that the out-of-state trust institution lacks sufficient resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the requirements of G.S. 53-315 or G.S. 53-316 have not been satisfied.

(e) An out-of-state trust institution that was allowed to maintain a representative trust office in this State under laws, or rules or orders of the Commissioner in effect prior to the effective date of this Article may continue to do so, but only to the extent allowed and subject to all limitations and conditions imposed under those laws, rules, or orders. (2001-263, s. 1; 2005-269, s. 10.)

**§ 53-320. Examinations; periodic reports; cooperative agreements; assessment of fees.**

(a) The Commissioner may examine any activity conducted through a trust office or representative trust office maintained in this State by an out-of-state trust institution to determine whether these activities are being conducted in compliance with the laws of this State and in accordance with safe and sound practices. The pertinent provisions of Part 4 of this Article shall apply to these examinations.

(b) The Commissioner may require periodic reports regarding any out-of-state trust institution that maintains a trust office or representative trust office in this State pursuant to this Subpart. The required reports shall be provided by the trust institution or by the home state regulator. Any reporting requirements shall be (i) consistent, to the extent practicable, with the reporting requirements applicable to State trust companies and (ii) appropriate for the purpose of enabling the Commissioner to carry out the Commissioner's responsibilities under the provisions of this Article. The pertinent provisions of Part 4 of this Article shall apply to these reports.

(c) The Commissioner may enter into cooperative, coordinating, and information-sharing agreements with bank supervisory agencies, including agreements arranged by an organization composed of, affiliated with, or representing one or more bank supervisory agencies, with respect to the periodic supervision and examination of any trust office or representative trust office of an out-of-state trust institution in this State, or any trust office or representative trust office of a State trust institution in any host state. The Commissioner may accept and rely upon a report of examination and report of investigation of a bank supervisory agency in lieu of conducting a separate examination or investigation.

(d) The Commissioner may enter into agreements with any bank supervisory agency supervising (i) a State trust institution engaging in trust business outside this State or (ii) an out-of-state trust institution maintaining a trust office or representative trust office in this State to engage the services of the agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this subsection. However, the Commissioner shall: (i) submit all proposed agreements or contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during and after the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

(e) The Commissioner may enter into joint examinations or joint enforcement actions with bank supervisory agencies supervising any trust office or representative trust office maintained in this State by an out-of-state trust institution or any trust office or representative trust office maintained by a State trust institution in any host state; provided, that the Commissioner may at any time take actions independently if the Commissioner considers the actions to be necessary or appropriate to carry out the Commissioner's responsibilities under the provisions of this Article or to ensure compliance with the laws of this State.

(f) Each out-of-state trust institution that maintains one or more trust offices or representative trust offices in this State may be assessed and, if assessed, shall pay supervisory and examination fees as provided by rules of the Commissioner. The fees may be shared with bank supervisory agencies or any organization composed of, affiliated with, or representing one or more bank supervisory agencies as agreed between those bank supervisory agencies and organizations and the Commissioner. (2001-263, s. 1; 2005-269, s. 11; 2010-194, s. 2; 2011-326, s. 15(b).)

#### **§ 53-321. Enforcement.**

(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

(1) That activities of a trust office maintained by an out-of-state trust institution in this State are being conducted in violation of the laws of this State or any rule, order, or declaratory ruling issued by the Commissioner, or in an unsafe and unsound manner, or that the out-of-state trust institution does not meet or no longer meets the requirements of this Subpart for maintaining a trust office in this State; or

(2) That an out-of-state trust institution is engaged in unauthorized trust activity.

In either event, the Commissioner may take any enforcement actions the Commissioner would be authorized to take if the trust office or the out-of-state trust institution were a State trust company and may issue an order temporarily or permanently prohibiting the out-of-state trust institution from engaging in trust business in this State.

(b) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine by order that an out-of-state trust institution maintaining a representative trust office in this State does not meet or no longer meets the requirements of this Subpart for maintaining a representative trust office in this State. The order shall be effective on the date of issuance or any other date the Commissioner determines.

(c) In cases involving extraordinary circumstances requiring immediate action, the Commissioner may take any action permitted by subsection (a) or (b) of this section without notice or opportunity for hearing but shall promptly afford a subsequent hearing upon an application to rescind the action taken.

(d) The Commissioner shall promptly give notice to the home state regulator and any other bank supervisory agency supervising the out-of-state trust institution of each enforcement action taken against an out-of-state trust institution and may consult and cooperate with other bank supervisory agencies in pursuing and resolving the enforcement action. (2001-263, s. 1; 2005-269, s. 12.)

#### **§ 53-322. Notice of transactions that cause a change in control.**

Each out-of-state trust institution that maintains a trust office or representative trust office in this State, or the home state regulator of the trust institution, shall give at least 30 days' notice or,

in the case of an emergency transaction or the cessation of trust activity in this State by an out-of-state trust institution or foreign trust institution whose only office in this State is a registered office, as much notice as practicable, to the Commissioner of:

- (1) Any merger, consolidation, share exchange, or other transaction that would cause a change in control of an out-of-state trust institution (i) that would be subject to Subpart D of Part 3 of this Article if the out-of-state trust institution were a State trust company or (ii) is required to be filed with any bank supervisory agency;
- (2) Any transfer of all or substantially all of the accounts or account assets of the out-of-state trust institution to another person; or
- (3) The closing, transfer, or discontinuance of any trust office or representative trust office in this State. (2001-263, s. 1; 2005-269, s. 13.)

Subpart E. Foreign Trust Institution Trust Offices and Representative Trust Offices.

**§ 53-323. Foreign trust institution application for trust office or representative trust office.**

Before establishing or acquiring and maintaining a trust office in this State, a foreign trust institution shall make application to the Commissioner for permission to do so in the English language and in the form required by the Commissioner. The application shall be preceded or accompanied by:

- (1) Evidence satisfactory to the Commissioner of compliance with all applicable requirements of Article 15 of Chapter 55 of the General Statutes;
- (2) Evidence satisfactory to the Commissioner of compliance by the foreign trust institution with any applicable requirements of its home country regulator for maintenance of capital, for expansion within the borders of its home country or within a political subdivision of its home country, and for acquiring or establishing and maintaining the trust office in this State;
- (3) Evidence satisfactory to the Commissioner that the foreign trust institution is not in a hazardous condition;
- (4) Unless waived by the Commissioner, a copy of the resolution adopted by the board of directors of the foreign trust institution, or similar governing body or a duly-authorized committee thereof, authorizing the trust office; and
- (5) Payment of any fee set by rule.

The Commissioner may require any materials not written in the English language to be translated, and the translation certified in a manner satisfactory to the Commissioner, at the expense of the foreign trust institution. (2001-263, s. 1; 2005-269, s. 14.)

**§ 53-324. Conditions for approval.**

(a) A foreign trust institution may engage in trust business in this State only on approval by the Commissioner of an application described in G.S. 53-323, which may be given upon conditions required by the Commissioner for prudential reasons consistent with any applicable international agreements to which the United States is a party.

(b) The Commissioner may deny approval of the application if the Commissioner finds that the foreign trust institution lacks sufficient resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the management, integrity, or reputation of the foreign trust institution does not justify approval. The Commissioner also may deny approval if the Commissioner is unable to determine from the application materials whether the foreign trust

institution possesses sufficient resources to undertake the proposed expansion without adversely affecting its safety or soundness or whether the management, integrity, or reputation of the foreign trust institution justifies approval. (2001-263, s. 1; 2005-269, s. 15.)

**§ 53-325. Additional trust offices and representative trust offices.**

A foreign trust institution that maintains a trust office in this State under the provisions of this Subpart may establish or acquire and maintain additional trust offices or representative trust offices in this State in the manner provided by G.S. 53-319 for out-of-state trust institutions, except that the Commissioner may require any additional information and impose any additional conditions as the Commissioner deems necessary for prudential reasons consistent with any applicable international agreements to which the United States is a party. (2001-263, s. 1.)

**§ 53-326. Examinations; periodic reports; cooperative agreements; assessment of fees.**

(a) The Commissioner may examine any activity conducted through a trust office or representative trust office maintained in this State by a foreign trust institution to determine whether these activities are being conducted in compliance with the laws of this State and in accordance with safe and sound practices. The pertinent provisions of Part 4 of this Article shall apply to these examinations.

(b) The Commissioner may require periodic reports regarding any foreign trust institution that maintains a trust office or representative trust office in this State. The required reports shall be provided in the English language by the trust institution or by its home country regulator. The reporting requirements shall be those the Commissioner considers appropriate for the purpose of enabling the Commissioner to carry out the Commissioner's responsibilities under the provisions of this Article for prudential reasons consistent with any applicable international agreements to which the United States is a party. The pertinent provisions of Part 4 of this Article shall apply to these reports.

(c) The Commissioner may enter into cooperative, coordinating, and information-sharing agreements with bank supervisory agencies supervising foreign trust institutions, including agreements arranged by an organization composed of, affiliated with, or representing one or more bank supervisory agencies, with respect to the periodic supervision and examination of any trust office or representative trust office of a foreign trust institution in this State, or any trust office or representative trust office of a State trust institution engaged in trust business or trust marketing in a foreign country. The Commissioner may accept and rely upon a report of examination and report of investigation of a bank supervisory agency in lieu of conducting a separate examination or investigation of a foreign trust institution.

(d) The Commissioner may enter into agreements with bank supervisory agencies supervising (i) a State trust institution engaging in trust business in a foreign country or (ii) a foreign trust institution maintaining a trust office or representative trust office in this State to engage the services of the bank supervisory agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the bank supervisory agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this section. However, the Commissioner shall: (i) submit all proposed agreements or contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the Commissioner under this subsection a standard



clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during and after the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

(e) The Commissioner may enter into joint examinations or joint enforcement actions with bank supervisory agencies supervising any trust office or representative trust office maintained in this State by a foreign trust institution or any trust office or representative trust office maintained by a State trust institution in any foreign country; provided, that the Commissioner may at any time take actions independently if the Commissioner considers the actions to be necessary or appropriate to carry out the Commissioner's responsibilities under the provisions of this Article or to ensure compliance with the laws of this State.

(f) Each foreign trust institution that maintains one or more trust offices or representative trust offices in this State may be assessed and, if assessed, shall pay supervisory and examination fees as provided by rules of the Commissioner. The fees may be shared with bank supervisory agencies or with any organization composed of, affiliated with, or representing one or more bank supervisory agencies, as agreed between the bank supervisory agencies and organizations and the Commissioner. (2001-263, s. 1; 2005-269, s. 16; 2010-194, s. 3; 2011-326, s. 15(c).)

#### **§ 53-327. Enforcement.**

(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

- (1) That activities of a trust office or representative trust office maintained by a foreign trust institution in this State are being conducted in violation of the laws of this State or any rule, order, or declaratory ruling issued by the Commissioner, or in an unsafe and unsound manner, or that the foreign trust institution does not meet or no longer meets the requirements of this Subpart for maintaining a trust office or representative trust office in this State; or
- (2) That a foreign trust institution is engaged in unauthorized trust activity.

In either event, the Commissioner may take any enforcement actions the Commissioner would be authorized to take if the foreign trust institution were a State trust company and may issue an order temporarily or permanently prohibiting the foreign trust institution from engaging in trust business or trust marketing in this State.

(b) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine by order that a foreign trust institution maintaining a representative trust office in this State does not meet or no longer meets the requirements of this Subpart for maintaining a representative trust office in this State. The order shall be effective on the date of issuance or any other date the Commissioner determines.

(c) In cases involving extraordinary circumstances requiring immediate action, the Commissioner may take any action permitted by subsection (a) or (b) of this section without notice or opportunity for hearing but shall promptly afford a subsequent hearing upon request to rescind the action taken.

(d) The Commissioner shall promptly give notice to the home country regulator and any other bank supervisory agency supervising the foreign trust institution of each enforcement action taken against a foreign trust institution and may consult and cooperate with bank supervisory agencies in pursuing and resolving the enforcement action. (2001-263, s. 1; 2005-269, s. 17.)

**§ 53-328. Notice of transactions that cause a change in control.**

Each foreign trust institution that maintains a trust office or representative trust office in this State, or the home country regulator of the foreign trust institution, shall give at least 30 days' notice (or, in the case of an emergency transaction or the cessation of trust activity in this State by an out-of-state trust institution or foreign trust institution whose only office in this State is a registered office, as much notice as practicable) to the Commissioner, in the form required by the Commissioner, of:

- (1) Any merger, consolidation, share exchange, or other transaction that would cause a change of control of a foreign trust institution:
  - a. That would be subject to Subpart D of Part 3 of this Article if the foreign trust institution were a State trust company; or
  - b. Is required to be filed with any bank supervisory agency;
- (2) Any transfer of all or substantially all of the accounts or account assets of the foreign trust institution to another person; or
- (3) The closing, transfer, or discontinuance of any trust office or representative trust office in this State. (2001-263, s. 1; 2005-269, s. 18.)

**§ 53-329. International agreements.**

If any provision of this Article concerning foreign trust institutions, or the application of that provision, is found by any competent adjudicatory body to violate any international agreement to which the United States is a party, the provision shall be deemed modified only to the extent and only in the particular circumstances necessary to make the provision as modified comply with the international agreement, and the remaining provisions of this Article shall not be affected and shall continue to apply to foreign trust institutions. (2001-263, s. 1.)

Part 3. State Trust Company Charter Act.  
Subpart A. General.

**§ 53-330. Title and purposes.**

- (a) This Part may be cited as the State Trust Company Charter Act.
- (b) It is the express intent of this Part to provide for the chartering of trust companies apart from the provisions of Article 2 of this Chapter and to permit trust companies to engage in trust business subject to the provisions of this Article. (2001-263, s. 1.)

Subpart B. Organization and Powers of State Trust Company.

**§ 53-331. Organization and powers of State trust company.**

- (a) Subject to the other provisions of this Part, one or more persons may organize and charter a State trust company, which may be established in the manner described in this Part and in no other way.
- (b) Subject to G.S. 53-313 and G.S. 53-336(b) and other applicable provisions of State and federal law, a State trust company may:
  - (1) Act as a fiduciary within or outside this State;
  - (2) Act within or outside this State as agent, advisory agent, assignee, assignee for the benefit of creditors, attorney-in-fact, authenticating agent, bailee, bond or indenture trustee, conservator, conversion agent, curator, custodian, escrow agent, exchange agent, fiscal or paying agent, financial adviser, investment

adviser, investment manager, managing agent, purchase agent, receiver, registrar, safekeeping agent, subscription agent, transfer agent, warrant agent, or in similar capacities generally performed by corporate trustees, and in so acting to possess, purchase, sell, invest, reinvest, safekeep, or otherwise manage or administer real or personal property of other persons;

- (3) Engage in trust marketing within this State; and
- (4) Exercise the powers of a business corporation organized under North Carolina law and any incidental powers that are reasonably necessary to enable it to fully exercise, in accordance with commonly accepted fiduciary customs and usages, a power conferred in this Article. (2001-263, s. 1; 2011-339, s. 9.)

**§ 53-332. Articles of incorporation of State trust company.**

(a) The articles of incorporation of a State trust company shall be signed and acknowledged by or on behalf of each organizer and shall contain:

- (1) The information required to be set forth in G.S. 55-2-02(a) and, except for telephone information, G.S. 53-311(c); and
- (2) Any provision consistent with G.S. 55-2-02(b) and other applicable law that the organizers elect to set forth in the articles of incorporation for the regulation of the internal affairs of the State trust company.

(b) The Commissioner may allow a State trust company to be organized as a company other than a corporation, and, in such case, references in this Article to provisions of Chapter 55 of the General Statutes shall refer to analogous provisions of law governing the formation and operation of that State trust company. (2001-263, s. 1; 2011-339, s. 10.)

**§ 53-333. Application for State trust company charter and permission to incorporate State trust company.**

(a) An application for a State trust company charter and permission to incorporate the State trust company shall be made to the Commissioner in the form required by the Commissioner and shall be supported by information, data, and records that the Commissioner requires. The application shall be accompanied by the fee set by the Commissioner by rule.

(b) Upon receipt of the application, the Commissioner shall at once conduct an examination of all relevant facts connected with the formation of the proposed State trust company. The Commissioner may consider the following factors:

- (1) The proposed market or markets to be served;
- (2) Whether the proposed organizational and capital structure and the amount of initial capital appear adequate in relation to the proposed business and market or markets;
- (3) Whether the anticipated volume and nature of business indicate a reasonable probability of success and profitability based on the market or markets proposed to be served;
- (4) Whether the proposed officers and directors, as a group, have sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed State trust company will be free from improper or unlawful influence and otherwise will operate in compliance with law, and that success of the proposed State trust company is reasonably probable; and

- (5) Whether the proposed name of the proposed State trust company is likely to mislead the public as to its character or purpose or is the same as a name already adopted by an existing bank, savings association, or trust institution in this State, or so similar thereto as to be likely to mislead the public.
- (c) The failure of an applicant to furnish required information, data, other material, or the required fee within 30 days after a request may be considered an abandonment of the application. (2001-263, s. 1.)

**§ 53-334. Notice and investigation of charter application.**

- (a) The Commissioner shall notify the organizers when the application is complete and accepted for filing and all required fees have been paid.
- (b) The Commissioner shall investigate the application and inquire into the identity and character of each proposed director, officer, and principal shareholder. Notwithstanding any laws to the contrary, information in the application bearing on the character, or information about the personal finances, of an existing or proposed organizer, officer, director, or shareholder is confidential and not subject to public disclosure. (2001-263, s. 1.)

**§ 53-335. Decision on charter application and hearing.**

- (a) The Commissioner, based on the application and investigation described in this Subpart, shall enter an order approving or denying approval of the application.
- (b) If the Commissioner orders that the proposed State trust company may be formed, the Commissioner shall issue a State trust company charter and a certification to the Secretary of State permitting the establishment of the State trust company. The Commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter.
- (c) Any order entered by the Commissioner with respect to a charter application shall be subject to review by the Commission for entry of final agency decision. (2001-263, s. 1; 2011-339, s. 11.)

**§ 53-336. Issuance of charter.**

- (a) A proposed State trust company shall not be incorporated or engage in trust business or trust marketing until it receives a charter issued by the Commissioner. The Commissioner shall not issue the charter until the State trust company certifies that it has:
  - (1) Received cash or United States government securities having a market value on the date of capitalization in at least the full amount of required initial capital from subscriptions for the issuance of shares;
  - (2) Elected the initial officers and directors named in the application for charter or other officers and directors approved by the Commissioner; and
  - (3) Complied with all other requirements of this Subpart relative to the organization of a State trust company.
- (b) The charter issued by the Commissioner shall set forth the trust powers of the State trust company, which may be stated as:
  - (1) All powers granted to a State trust company in this State; or
  - (2) Specific powers that the State trust company chooses and is authorized by the Commissioner to exercise.

(c) If a State trust company does not open and engage in trust business within six months after the date it receives its charter, or within such further period as may be extended by the Commissioner, the Commissioner may cancel the charter. (2001-263, s. 1.)

**§ 53-337. Required initial capital.**

(a) The Commissioner shall not issue a charter to a proposed State trust company having initial capital of less than two million dollars (\$2,000,000), except as provided in subsection (b) of this section.

(b) The Commissioner may require additional initial capital for a proposed State trust company if the Commissioner finds the proposed scope or type of operation of a proposed State trust company requires additional initial capital for the safe and sound operation of the State trust company. The Commissioner may reduce the amount of minimum initial capital required for a proposed State trust company if the Commissioner finds the proposed scope or type of operation of a proposed State trust company may be formed with reduced initial capital consistent with the safe and sound operation of the State trust company. The safety and soundness factors to be considered by the Commissioner in the exercise of the Commissioner's discretion include:

- (1) The nature and type of business proposed to be conducted;
  - (2) The nature and liquidity of assets proposed to be held in a corporate capacity;
  - (3) The amount of fiduciary assets projected to be under management;
  - (4) The type of fiduciary assets proposed to be held and the proposed depository of the assets;
  - (5) The complexity of fiduciary duties and degree of discretion proposed to be undertaken;
  - (6) The competence and experience of proposed management;
  - (7) The extent and adequacy of proposed internal controls;
  - (8) The proposed presence or absence of annual unqualified audits by an independent certified public accountant;
  - (9) The reasonableness of business plans for retaining or acquiring additional equity capital; and
  - (10) The existence and adequacy of insurance proposed to be obtained by the trust company for the purpose of protecting its clients, beneficiaries, and grantors.
- (2001-263, s. 1.)

**§ 53-338. Subordinated notes or debentures.**

The amount of any outstanding notes or debentures that are subordinated to creditors or classes of creditors of the State trust company may be treated as equity capital of the State trust company for purposes of determining equity capital adequacy, hazardous condition, or insolvency, and for other purposes, as provided by rules, orders, or declaratory rulings of the Commissioner. (2001-263, s. 1.)

**§ 53-339. Application of laws relating to general business corporations.**

Chapter 55 of the General Statutes applies to a State trust company to the extent not inconsistent with this Article. Except for the filing of annual reports and statement of change of registered agent or registered office, unless expressly authorized by this Article or a rule adopted by the Commission, a State trust company shall not take an action authorized by Chapter 55 of the

General Statutes that requires a filing with the Secretary of State without first obtaining the approval of the Commissioner. (2001-263, s. 1.)

Subpart C. Investments and Activities.

**§ 53-340. Investment in State trust company facilities.**

(a) A State trust company may invest in one or more State trust company facilities consistent with the safe and sound operation of a State trust company.

(b) For the purposes of this Part, "State trust company facility" means real estate owned, or leased to the extent the lease or the leasehold improvements are capitalized, by a State trust company for the purposes of:

- (1) Providing space for State trust company employees, officers, and directors to perform their duties and space for appropriate parking;
- (2) Conducting trust business, including meeting the reasonable needs and convenience of the State trust company's customers, employees, officers, and directors, and providing for necessary computer operations, data processing, maintenance, and record retention and storage;
- (3) Future expansion of the State trust company's facilities; or
- (4) Conducting another activity authorized by law or by rules, orders, or declaratory rulings of the Commissioner.

(c) Without the approval of the Commissioner, a State trust company shall not, within the first three years following issuance of its charter, directly or indirectly, invest an amount in excess of one-half of its initial capital in State trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by rules, orders, or declaratory rulings of the Commissioner, in computing this limitation, a State trust company shall include:

- (1) Its direct investment in State trust company facilities;
- (2) Any investment in a company with an interest in a State trust company facility;
- (3) Any indebtedness incurred on State trust company facilities by an affiliate of the State trust company.

Except as otherwise provided by rules, orders, or declaratory rulings of the Commissioner, in computing this limitation, a State trust company may exclude an amount included under subdivisions (1) through (3) of this subsection to the extent any lease of a facility from the company holding title to the facility is capitalized by the State trust company.

(d) Real estate acquired under subdivision (3) of subsection (b) of this section ceases to be a State trust company facility if it is not used for a purpose listed in subdivision (1), (2), or (4) of subsection (b) of this section on the third anniversary of the date of its acquisition unless the Commissioner grants approval to hold the real estate for a longer period. (2001-263, s. 1.)

**§ 53-341. Other real estate.**

(a) A State trust company shall not acquire real estate other than a State trust company facility for its own account except:

- (1) Securitized interests in real estate and obligations secured by real estate;
- (2) As necessary to avoid or minimize a loss on an investment previously made in good faith; or
- (3) As provided by rules, orders, or declaratory rulings of the Commissioner.

(b) To the extent reasonably necessary to avoid or minimize loss on real estate acquired as permitted by subsection (a) of this section or under G.S. 53-340, a State trust company may

exchange real estate for other real estate or personal property, invest additional funds in or improve such real estate, or acquire additional real estate.

(c) Except as provided in subsection (d) of this section, a State trust company shall dispose of any real estate acquired as permitted by subdivision (2) of subsection (a) of this section or under G.S. 53-340:

- (1) In the case of real estate acquired under subdivision (2) of subsection (a) of this section, on or before the fifth anniversary of:
  - a. The date it was acquired; or
  - b. The date it ceases to be used as a State trust company facility if it began to be so used after its acquisition.
- (2) In the case of real estate acquired under G.S. 53-340, on or before the third anniversary of the date it ceases to be a State trust company facility as provided by G.S. 53-340.

(d) The Commissioner may grant one or more extensions of time for disposing of real estate if the Commissioner determines that:

- (1) The State trust company has made a good faith effort to dispose of the real estate and has been unable to do so on reasonably advantageous terms; or
- (2) Disposal of the real estate otherwise would be detrimental to the State trust company. (2001-263, s. 1.)

#### **§ 53-342. Securities and other investments.**

(a) A State trust company may invest its corporate funds in any type or character of equity securities or debt securities subject to the limitations provided by this section.

(b) Unless the Commissioner approves maintenance of a lesser amount, a State trust company shall invest and maintain an amount equal to at least forty percent (40%) of its equity capital in unencumbered cash, cash equivalents, and readily marketable securities.

(c) Subject to subsections (d) and (e) of this section, the total investment in equity and investment securities of any one issuer, obligor, or maker held by a State trust company for its own account shall not exceed an amount equal to fifteen percent (15%) of the State trust company's equity capital. The Commissioner may authorize investments in excess of this limitation if the Commissioner concludes that the safe and sound operation of a State trust company would not be adversely affected by a proposed investment exceeding this limitation.

(d) In calculating compliance with the investment limits set forth in subsection (c) of this section, a State trust company shall not be required to combine:

- (1) The State trust company's pro rata share of the securities of an issuer in the portfolio of a collective investment vehicle with the State trust company's pro rata share of the securities of that issuer held by another collective investment vehicle in which the State trust company has invested; or
- (2) The State trust company's own direct investment in the securities of an issuer with the State trust company's pro rata share of the securities of that issuer held by collective investment vehicles in which the State trust company has invested under the provisions of this section.

(e) Notwithstanding subsection (c) of this section, a State trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:

- (1) Bonds and other general obligations of a state, an agency, or political subdivision of a state, the United States, or an agency or instrumentality of the United States;
- (2) A debt security that this State, an agency or political subdivision of this State, the United States, or an agency or instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;
- (3) Securities that are offered and sold under 15 U.S.C. § 77d(5);
- (4) Mortgage-related securities as defined in 15 U.S.C. § 78c(a);
- (5) Investment securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Agricultural Mortgage Association, or the Federal Farm Credit Banks Funding Corporation; and
- (6) Investment securities issued or guaranteed by the North American Development Bank.

(f) The Commissioner may allow State trust companies to make other investments of its corporate funds not specified in this Subpart by rules, orders, or declaratory rulings. (2001-263, s. 1.)

**§ 53-343. Prohibited distributions, acquisitions, liens, or pledges.**

A State trust company shall not make any distribution to its shareholders, acquire its own shares, acquire a lien upon its own shares, or pledge its own assets while an order of the Commissioner prohibiting such distributions, acquisitions, liens, or pledges is in effect. (2001-263, s. 1.)

**§ 53-344. Subsidiaries.**

(a) Before acquiring, establishing, or performing activities through a subsidiary, a State trust company shall file a notice with the Commissioner, in the form required by the Commissioner, describing in detail the proposed activities of the subsidiary, the amount of the State trust company's proposed investment in the subsidiary, and the State trust company's proposed ownership interest in the subsidiary.

(b) The State trust company may acquire or establish a subsidiary or begin performing activities in an existing subsidiary 30 days following the date the Commissioner receives the notice, unless the Commissioner:

- (1) Establishes an earlier or later date;
- (2) Notifies the State trust company that the notice raises issues that require additional information or additional time for analysis; or
- (3) Disapproves the acquisition, establishment, or performance of activities through the subsidiary.

(c) If the Commissioner gives a notification described in subdivision (2) of subsection (b) of this section, the State trust company may acquire, establish or conduct activities through the subsidiary only on approval by the Commissioner. The Commissioner may disapprove the subsidiary if the Commissioner finds that the State trust company lacks sufficient resources to undertake the proposed expansion or perform the activity without adversely affecting its safety or soundness.

(d) The Commissioner may make the establishment, acquisition, or performance of new activities through a subsidiary conditional and shall include any such conditions in an order.



(e) The provisions of this section, rather than G.S. 53-342, shall apply to the establishment of a subsidiary by a State trust company.

(f) Changes in ownership or control of a subsidiary of a State trust company shall be made only upon the approval of the Commissioner obtained in accordance with the procedures set forth in this section. (2001-263, s. 1.)

**§ 53-345. Engaging in commerce prohibited.**

Except as otherwise provided by this Part, or by rules, orders, or declaratory rulings of the Commissioner, a State trust company shall not engage in trade or commerce by buying, selling, or otherwise dealing in goods, or by conducting business other than trust business and trust marketing, except as necessary to fulfill a fiduciary obligation to a client. (2001-263, s. 1.)

**§ 53-346. Lending and lease financing; conversion to State bank.**

(a) Except as may be appropriate for extensions of credit in connection with trust or other account relationships, and as provided in and subject to the provisions of Article 5 of Chapter 36A of the General Statutes and other provisions of applicable law, a State trust company shall not engage in a loan business or in lease financing transactions as the party extending credit.

(b) Notwithstanding any other provision of this Chapter, a State trust company may, with the approval of the Commissioner, convert to a State bank by following the procedures and requirements set forth in Article 2 of this Chapter, subject to any modifications to those procedures and requirements that are necessary and appropriate for the conversion of a State trust company. The Commissioner may make modifications to procedures or requirements of Article 2 of this Chapter by rule, order or declaratory ruling. (2001-263, s. 1.)

**Subpart D. Ownership; Governance; Mergers.**

**§ 53-347. Acquisition of control.**

(a) Except as this section otherwise expressly permits, a person shall not, without the approval of the Commissioner, directly or indirectly acquire control of a State trust company.

(b) This Subpart does not prohibit a person from contracting to acquire control of a State trust company subject to required approvals.

(c) This Subpart does not require the approval of the Commissioner for the acquisition of securities in the following circumstances:

- (1) The acquisition of securities in connection with securing, collecting, or satisfying a debt previously contracted for in good faith if the acquiring person files notice of acquisition of control with the Commissioner, in the form required by the Commissioner, at least 10 days before the person votes the securities acquired;
- (2) The acquisition of additional voting securities in any class or series by a controlling person who previously has complied with and received approval under the provisions of this Article or who was identified as a controlling person in a prior application filed with and approved by the Commissioner if the acquiring person files notice of acquisition of those securities with the Commissioner, in the form required by the Commissioner, at least 10 days before the person votes the securities acquired;
- (3) An acquisition or transfer of securities by operation of law, will, or intestate succession if the acquiring person files notice of acquisition of control with the

Commissioner, in the form required by the Commissioner, at least 10 days before the person votes the securities acquired;

- (4) An acquisition of securities by gift, unless the gift is made for the purpose of circumventing this section, if the acquiring person files notice of acquisition of control with the Commissioner, in the form required by the Commissioner, at least 10 days before the person votes the securities acquired; or
- (5) A transaction exempted by the Commissioner by rules, orders, or declaratory rulings because (i) the transaction is not within the purposes of this Article, or (ii) regulation of the transaction is not necessary or appropriate to achieve the objectives of this Article.

(d) Information provided under the provisions of subsection (c) of this section shall be subject to G.S. 53-348(c), and persons providing that information shall be subject to G.S. 53-348(d).

(e) Upon receiving a notice described in subsection (c) of this section, the Commissioner may, on or before the tenth day after the acquiring person files the notice, notify the acquiring person of objection to the voting of securities by the acquiring person or of a request for further information concerning the acquisition of control. If the Commissioner notifies the acquiring person of the objection or request for further information, the acquiring person may vote the shares only on approval by the Commissioner and:

- (1) The acquiring person shall follow the procedures prescribed in this Subpart for an application to acquire control of a State trust company;
- (2) The Commissioner may request any information that may be requested under the procedures prescribed in this Subpart in connection with an application to acquire control of a State trust company; and
- (3) For purposes of determining a quorum of shareholders of a State trust company, the shares shall be treated as authorized but unissued shares unless (i) the Commissioner approves the application to vote the securities or (ii) the acquiring person no longer has the power to vote the shares, either directly or indirectly. (2001-263, s. 1.)

#### **§ 53-348. Application regarding acquisition of control.**

(a) A person seeking approval to acquire control of a State trust company shall file with the Commissioner:

- (1) An application in the form required by the Commissioner;
- (2) Any filing fee required by rule; and
- (3) All information required by rule or that the Commissioner requires in connection with a particular application in order to make an informed decision to approve or reject the proposed acquisition of control.

(b) If any group of individuals or entities acting in concert seek approval to acquire control, the information the Commissioner may require under the provisions of this Subpart may be required of each member of the group.

(c) Notwithstanding any laws to the contrary, information bearing on the character or information about the personal finances of an existing or proposed shareholder of a State trust company or other individual is confidential and not subject to public disclosure.

(d) If a person seeking approval to acquire control is not a North Carolina resident, a North Carolina corporation, or an out-of-state corporation qualified to do business in this State, the

Commissioner may require the person to appoint a resident agent for service of process. (2001-263, s. 1.)

**§ 53-349. Decision on acquisition of control.**

(a) Not later than the sixtieth day following receipt of the application, the Commissioner shall either approve or deny the proposed acquisition of control.

(b) The Commissioner may deny an acquisition of control if:

- (1) The financial condition of the person seeking approval to acquire control, or any member of a group seeking approval to acquire control, might jeopardize the financial stability of the State trust company or the interests of its clients;
- (2) Investigation of the character, competence, general fitness, experience, or integrity of the person seeking approval to acquire control, or any member of a group seeking approval to acquire control, shows that the proposed acquisition of control would not be in the best interests of the clients of the State trust company;
- (3) Plans or proposals to operate, liquidate, or sell the State trust company or its assets following the acquisition of control are not in the best interests of the State trust company's clients;
- (4) The State trust company would not be solvent, have adequate equity capital, or be in compliance with the laws of this State after the acquisition of control; or
- (5) The person seeking approval to acquire control has failed to furnish all information required by the Commissioner.

(c) If an application filed under the provisions of this section is approved by the Commissioner, the transaction may be consummated. Any written commitment from the person seeking approval to acquire control made as a condition for approval of the application is enforceable against the State trust company and the person acquiring control. (2001-263, s. 1.)

**§ 53-350. Appeal.**

Any order entered by the Commissioner with respect to an application for acquisition or control of a State trust company shall be subject to review by the Commission for entry of a final agency decision. (2001-263, s. 1.)

**§ 53-351. Report of changes in chief executive officer or directors.**

Each State trust company shall report to the Commissioner within 48 hours, on the forms and with the information required by the Commissioner, any changes in the chief executive officer or the directors of the State trust company, including in its report a statement of the past and current business and professional affiliations of each new chief executive officer or director. (2001-263, s. 1.)

**§ 53-352. Board of directors.**

(a) All corporate powers of a State trust company shall be exercised under the authority of, and the business and affairs of a State trust company shall be managed under the direction of, a board of directors. Without the approval of the Commissioner, the board shall consist of not less than five directors. Except as specifically provided otherwise in this section, the number, election, term, and classification of the directors of a State trust company shall be governed by the provisions of Chapter 55 of the General Statutes.

(b) Before each term to which a person is elected to serve as a director of a State trust company, the person shall submit an affidavit for filing in the minutes of the State trust company stating that the person:

- (1) Accepts the position;
- (2) Will not knowingly violate, or knowingly permit an officer, director, or employee of the State trust company to violate, any law applicable to the conduct of business of the State trust company; and
- (3) Will diligently perform the duties of a director.

(c) A person designated with a title such as advisory director is not considered a director if that person:

- (1) Is not elected by the shareholders of the State trust company; and
- (2) Does not vote on matters before the board of directors or any committee of the board and is not counted for purposes of determining a quorum of the board or any committee of the board. (2001-263, s. 1; 2011-339, s. 12.)

#### **§ 53-353. Required board meetings.**

The board of directors of a State trust company shall hold at least one regular meeting each quarter. At each regular meeting, the board shall review and approve, or disapprove and correct, the minutes of the prior meeting and review the operations, activities, and financial condition of the State trust company. The board may designate committees from among its members to perform these duties and approve or disapprove the committees' reports at each regular meeting. All material actions of the board shall be recorded in its minutes. (2001-263, s. 1.)

#### **§ 53-354. Officers.**

The board of directors shall annually appoint the officers of the State trust company who shall serve at the pleasure of the board. The contract rights of officers, if any, shall be governed by applicable provisions of Chapter 55 of the General Statutes and general law. The State trust company shall have a chief executive officer primarily responsible for the execution of board policies and operation of the State trust company. The State trust company also shall have an officer responsible for the maintenance and storage of all corporate books and records of the State trust company and for required attestation of signatures. These positions shall not be held by the same person. The board may appoint any other officers of the State trust company, including assistants to the officers required by this section, the board considers necessary or appropriate. (2001-263, s. 1.)

#### **§ 53-355. Certain criminal offenses.**

(a) An officer, director, employee, or shareholder of a State trust company commits an offense if the person knowingly:

- (1) Conceals information or a fact, or removes, destroys, or conceals a book or record of the State trust company for the purpose of concealing information or a fact, from the Commissioner or an agent of the Commissioner; or
- (2) For the purpose of concealing information or a fact, removes or destroys any book or record of the State trust company that is material to a pending or anticipated legal or administrative proceeding.

(b) An officer, director, or employee of a State trust company commits an offense if the person knowingly makes a false entry in the books or records or in any report or statement of the State trust company.

(c) An offense under the provisions of this section shall be a Class H felony. (2001-263, s. 1.)

**§ 53-356. Responsibility of directors.**

(a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30.

(b) Any director of a State trust company who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of such State trust company, any of the provisions of this Article shall be held personally and individually liable for all damages which the State trust company, its shareholders, or any other person has sustained in consequence of the violation. Any aggrieved shareholder of any State trust company in liquidation may prosecute an action for the enforcement of the provisions of this section. Only one such action may be brought. The procedure shall follow, as much as possible, that prescribed by Article 3 of Chapter 44A of the General Statutes, relative to suits on bonds of contractors with municipal corporations. (2001-263, s. 1.)

**§ 53-357. Record keeping.**

A State trust company shall keep its fiduciary records separate and distinct from its other records. The fiduciary records shall contain all material information relative to each account as appropriate under the circumstances. (2001-263, s. 1.)

**§ 53-358. Bonding requirements; reports of apparent crime.**

(a) The board of directors of a State trust company shall require protection and indemnity for the State trust company and its clients in amounts established by rules, orders, or declaratory rulings of the Commissioner, or otherwise in reasonable amounts, against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses, with corporate insurance or surety companies:

- (1) Authorized to do business in this State; or
- (2) Acceptable to the Commissioner and otherwise lawfully permitted to issue coverage against those losses in this State.

(b) Except as otherwise provided by rules, orders, or declaratory rulings of the Commissioner, coverage required under subsection (a) of this section shall include each director, officer, and employee of the State trust company without regard to whether the person receives salary or other compensation.

(c) A State trust company that is the victim of a robbery, has a shortage of corporate or account assets in excess of five thousand dollars (\$5,000), or is the victim of an apparent or suspected misapplication of its corporate property or account assets in any amount shall report the robbery, shortage, or apparent or suspected misapplication to the Commissioner within 48 hours after the time it is discovered. The initial report may be oral if a written report is made promptly following the oral report. Neither the State trust company nor any director, officer, employee, or agent of the State trust company is subject to any liability for providing any information in any such report in good faith. (2001-263, s. 1.)

**§ 53-359. Merger, share exchange, or asset transfer authority.**

(a) With the approval of the Commissioner, a State trust company may merge or exchange its shares with, or acquire or be acquired through a merger or share exchange with, another company, or may transfer to another company all or substantially all of its assets and liabilities, or may acquire from another company all or substantially all of its assets and liabilities.

(b) A merger or share exchange authorized by subsection (a) of this section, shall be governed by Article 11 of Chapter 55 of the General Statutes and G.S. 53C-7-205. An acquisition or transfer of assets authorized by subsection (a) of this section shall be governed by Article 12 of Chapter 55 of the General Statutes and G.S. 53C-7-205. (2001-263, s. 1; 2012-56, s. 30.)

**§ 53-360. Merger, share exchange, or asset transfer application.**

(a) A copy of the proposed articles of merger or share exchange, or asset transfer agreement, and an application in the form required by the Commissioner, shall be filed with the Commissioner. The Commissioner shall investigate the condition of the parties proposing to engage in the merger, share exchange, or asset transfer and may require the submission of additional information.

(b) The Commissioner may approve the merger or share exchange if:

- (1) Each resulting trust institution will be solvent and have adequate capitalization;
- (2) Each resulting trust institution appears able and ready to comply substantially with the statutes and rules relative to its organization;
- (3) Each resulting State trust company will be a "domestic corporation" as that term is defined in G.S. 55-1-40(4);
- (4) All fiduciary obligations and liabilities of each trust institution that is a party to the merger, share exchange, or asset transfer have been discharged properly or otherwise have been or will be assumed or retained properly by a person;
- (5) Each surviving, new, acquiring, or transferring party that is not authorized to engage in trust business will not engage in trust business and appears able and ready to comply substantially with applicable laws and rules; and
- (6) All conditions imposed by the Commissioner have been satisfied or otherwise resolved. (2001-263, s. 1.)

**§ 53-361. Notice and investigation of merger, share exchange, or asset transfer; decision, hearing, and appeal.**

(a) The Commissioner shall notify the parties to the proposed merger, share exchange, or asset transfer when the application is complete and all required fees have been paid. Promptly following this notification, the parties shall provide notice to clients who may be affected by the proposed merger, share exchange, or asset transfer in the form and manner specified by the Commissioner.

(b) At the expense of the parties to the proposed merger, share exchange, or asset transfer, the Commissioner may investigate the proposed transaction, including the character of the proposed directors, officers, and principal shareholders of each resulting trust institution and of any other person proposed to succeed to the accounts of the applying institutions. Notwithstanding any laws to the contrary, information bearing on the character or information about the personal finances of an existing or proposed organizer, officer, director, or shareholder is confidential and not subject to public disclosure.

(c) Based on the application and investigation, the Commissioner shall enter an order approving or denying approval of the proposed merger, share exchange, or asset transfer not later

than the sixtieth day following the date the Commissioner notifies the parties that the application is complete, unless extraordinary circumstances require a longer period of review.

(d) Any written commitment made by a person proposing to engage in the merger, share exchange, or asset transfer as a condition for approval of the application is enforceable against that person.

(e) Any order entered by the Commissioner under the provisions of this section shall be subject to review by the Commission for entry of a final agency decision. (2001-263, s. 1.)

#### **§ 53-362. Appraisal rights of shareholders in mergers, share exchanges, or asset transfers.**

A shareholder of a State trust company may exercise appraisal rights in connection with the proposed merger, share exchange, or asset transfer to the extent allowed under, and by following the procedures prescribed by, Article 13 of Chapter 55 of the General Statutes. (2001-263, s. 1; 2011-347, s. 2.)

#### **Subpart E. Private Trust Companies.**

#### **§ 53-363. Private trust companies.**

(a) The following definitions apply in this Subpart:

(1) "Designated relative" means the individual required to be named in the application under G.S. 53-364(a)(5) requesting an exemption from certain provisions of this Act pursuant to G.S. 53-364.

(2) "Family member" means the designated relative and

- a. Any individual within the fifth degree of lineal kinship to the designated relative computed in accordance with G.S. 104A-1;
- b. Any individual within the ninth degree of collateral kinship to the designated relative computed in accordance with G.S. 104A-1;
- c. The spouse of the designated relative and of any individual qualifying as a family member under sub-subdivision a. and b. of this subdivision;
- d. A company controlled by one or more family members;
- e. A trust established by (i) a family member or (ii) an individual who is not a family member if income or principal of the trust could be distributed currently to or for the benefit of a family member;
- f. The estate of a family member; or
- g. A charitable foundation or other charitable entity created by a family member.

For purposes of this subdivision, a legally adopted individual shall be treated as a natural child of the adoptive parents.

(3) "Transact business with the general public" means to engage in any sales, solicitations, arrangements, agreements, or transactions to provide trust business services, whether or not for a fee, commission, or other type of remuneration, to more than 35 persons who are not family members, except that rules, orders, or declaratory rulings of the Commissioner may provide for other circumstances in which a State trust company either does or does not transact business with the general public. For the purposes of this subdivision, an estate, a trust, or any other legal entity having multiple beneficiaries or owners shall be deemed to constitute one person.

(b) A private trust company engaging in trust business in this State shall comply with all provisions of this Article applicable to a State trust company unless expressly exempted from a provision of this Article by the Commissioner pursuant to this section or prior to the enactment of this Article. However, notwithstanding G.S. 53-352(a), the holders of the equity securities of a private trust company may by unanimous agreement limit the authority of its board of directors; restrict, enlarge, or modify the rights or duties of particular directors; or allocate to an individual or group other than the board of directors some or all of the duties of a board of directors. A private trust company shall notify the Commissioner of the adoption of any agreement affecting the authority of the board of directors within 48 hours and shall provide such information as the Commissioner requests about the agreement. To the extent that an individual or group other than the board of directors is vested with the authority of the board of directors under this section, that individual or group shall be deemed to be acting as the board of directors in the exercise of that authority for all purposes of this Chapter.

(c) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of G.S. 53-333(b), 53-337(a), 53-339, 53-340, 53-341, 53-342, 53-345, 53-346, and 53-394(b). The Commissioner may grant the exemption request in whole or in part. The Commissioner also may issue rules, orders, or declaratory rulings granting exemptions to all private trust companies, or to private trust companies that meet specified conditions.

(d) The Commissioner may examine or investigate the private trust company or proposed private trust company in connection with the application for exemption. Unless the application presents novel or unusual questions, the Commissioner shall approve or deny the application for exemption no later than the sixty-first day after the date the Commissioner considers the application complete and accepted for filing. The Commissioner may require the submission of additional information in order to make an informed decision to approve or reject the proposed exemption.

(e) Any exemption granted under the provisions of this section may be made subject to conditions or limitations imposed by the Commissioner consistent with this Subpart, and those conditions or limitations shall be included in an order.

(f) Rules, orders, or declaratory rulings of the Commissioner may provide for other circumstances that justify exemption from specific provisions of this Article, specifying the provisions of this Act that are subject to the exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exemptions. (2001-263, s. 1; 2011-339, ss. 13, 14.)

#### **§ 53-364. Requirements to apply for and maintain status as a private trust company.**

(a) A private trust company or a proposed private trust company requesting an exemption from the provisions of this Article pursuant to G.S. 53-363 shall file an application with the Commissioner, in the form required by the Commissioner, containing, preceded, or accompanied by:

- (1) An application fee as set by rules of the Commissioner;
- (2) A statement under oath of the reasons for requesting the exemption;
- (3) A statement under oath showing that the private trust company is not currently transacting business with the general public and that the company will not transact business with the general public without the approval of the Commissioner;



- (4) A listing of the specific provisions of the Act from which exemption is requested; and
- (5) The name of the designated relative whose relationship to other individuals determines whether the individuals are family members under G.S. 53-363(a)(2). The designated relative must be living and 18 years of age or older at the time the application is made.

(b) The Commissioner may make further inquiry and investigation as the Commissioner deems appropriate. Notwithstanding any other law to the contrary, information bearing on actual or proposed accounts of the private trust company or proposed private trust company applying for the exemption is confidential and not subject to public disclosure.

(c) To maintain its status as a private trust company and to maintain any exemptions from the provisions of this Article granted by the Commissioner, a private trust company shall file with the Commissioner an annual certification that it is in compliance with the provisions of this Subpart and the conditions and limitations of all exemptions granted. This annual certification shall be filed in the form required by the Commissioner and accompanied by any fee required by the Commissioner by rule. The annual certification shall be filed on or before December 31 of each year. The Commissioner may examine or investigate the private trust company periodically as necessary to verify the certification.

(d) In any transaction involving a private trust company for which an application is required under G.S. 53-360, any exemption from the provisions of this Article granted to the private trust company shall automatically terminate upon the consummation of the transaction unless the Commissioner approves the continuation of the exemption.

(e) The Commissioner may revoke any exemption from the provisions of this Article granted to a private trust company in the following circumstances:

- (1) An officer or director of the private trust company makes a false statement under oath on any document required to be filed by this Article or by any rules or orders of the Commissioner;
- (2) The private trust company fails to submit to an examination as required by G.S. 53-367;
- (3) An officer or director of the private trust company withholds requested information from the Commissioner; or
- (4) The private trust company violates any provision of this Subpart or fails to meet any condition on which the exemption is based.

(f) If the Commissioner determines from examination or other credible evidence that a private trust company has violated any of the requirements of this Subpart or fails to meet any condition or limitation on which an exemption from the provisions of this Article is based, the Commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the private trust company that the private trust company's exemptions from the provisions of this Article will be revoked unless the private trust company corrects the violation or failure or shows cause why any exemptions should not be revoked. The notification shall state grounds for the revocation with reasonable certainty and shall advise of an opportunity for a hearing. The notice shall state the date upon which the revocation shall become effective absent a correction or showing of cause why the exemption should not be revoked, which shall not be before the thirtieth day after the date the notification is mailed or delivered, except as provided in subsection (g) of this section. The revocation shall take effect for the private trust company on the date stated in the notice if the private trust company does not request a hearing in writing before the effective date.

After the revocation takes effect, the private trust company shall be subject to all of the requirements and provisions of this Article applicable to a State trust company.

(g) If the Commissioner determines from examination or other credible evidence that a private trust company appears to be engaging or attempting to engage in acts intended, designed, or likely to deceive or defraud the public, the Commissioner may shorten or eliminate the 30-day notice period specified in subsection (f) of this section, but shall promptly afford a subsequent hearing upon request to rescind the action taken.

(h) If the private trust company does not comply with all of the provisions of this Article or correct any failure to meet any condition or limitation on which an exemption is based within the notice period specified in subsection (f) of this section, the Commissioner may institute any action or remedy prescribed by this Article or any applicable rule. (2001-263, s. 1.)

#### **§ 53-365. Conversion to public trust company.**

(a) Before transacting business with the general public, a private trust company shall file a notice on a form prescribed by the Commissioner, which shall set forth the name of the private trust company and an acknowledgment that any exemption granted or otherwise applicable to the private trust company pursuant to G.S. 53-363 shall cease to apply once the Commissioner terminates private trust company status. The private trust company shall furnish a copy of the resolution adopted by its board of directors authorizing the private trust company to commence transacting business with the general public, and shall pay the filing fee, if any, prescribed by rule of the Commissioner.

(b) The private trust company may commence transacting business with the general public on the thirty-first day after the date the Commissioner receives the notice, unless the Commissioner:

- (1) Establishes an earlier or later date;
- (2) Notifies the private trust company that the notice raises issues that require additional information or additional time for analysis; or
- (3) Disapproves the termination of private trust company status.

(c) If the Commissioner gives a notification described in subdivision (2) of subsection (b) of this section, the private trust company status may be terminated only on approval by the Commissioner.

(d) The Commissioner may deny approval of the proposed termination of private trust company status if the Commissioner finds that the private trust company lacks sufficient resources to undertake the proposed conversion without adversely affecting its safety or soundness or if the Commissioner determines that the private trust company could not within a reasonable period be in compliance with any provision of this Article from which it previously had been exempted pursuant to G.S. 53-363. (2001-263, s. 1.)

### **Part 4. Applicable Law; Enforcement Actions.**

#### **Subpart A. Supervision and Examination.**

#### **§ 53-366. Applicability of other laws to authorized trust institutions; status of State trust company.**

(a) Except as otherwise provided in this Article, the following provisions of this Chapter and Chapter 53C of the General Statutes shall apply to authorized trust institutions:

- (1), (2) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.
- (3) G.S. 53C-7-205.

- (4) through (6) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.
- (7) Article 8 of Chapter 53C of the General Statutes, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of:
  - a. G.S. 53C-8-2.
  - b. G.S. 53C-8-3.
  - c. G.S. 53C-8-17.
- (8), (9) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.
- (10) Article 14 of this Chapter.
- (11) G.S. 53C-2-7(b).

(b) Rules adopted by the Commissioner to implement those provisions of this Chapter made applicable to authorized trust institutions by subsection (a) of this section also shall apply to authorized trust institutions unless the rules are inconsistent with this Article or it clearly appears from the context that a particular provision is inapplicable to trust business or trust marketing.

(c) Activities of authorized trust institutions for clients shall not be considered the sale or issuance of checks under Article 16 of Chapter 53 of the General Statutes.

(d) Until the Commissioner has issued new rules governing State trust companies, State trust companies shall be governed by rules issued by the Commissioner for banks acting in a fiduciary capacity, except to the extent the rules are inconsistent with this Article or it clearly appears from the context that a particular provision is inapplicable to the business of a State trust company.

(e) Notwithstanding any other provision of this Chapter, a State trust company:

- (1) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.
- (2) Is a "bank" for purposes of laws made applicable to authorized trust institutions in this section and for purposes of G.S. 53-277.
- (3) Is a trust company organized and doing business under the laws of the State of North Carolina, a substantial part of the business of which is exercising fiduciary powers similar to those permitted national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by the Commissioner as a banking institution; and
- (4) Is a financial institution similar to a bank.

(f) In the case of a State trust company controlled by a company that has declared itself to be a "financial holding company" under 12 U.S.C. § 1843(l)(1)(C)(i), deposits held for an account shall be deemed to be "trust funds" within the meaning of 12 U.S.C. § 1813(p) unless all fiduciary duties with respect to the account are explicitly disclaimed. This subsection does not prescribe the nature or extend the scope of any fiduciary duties; the nature and extent of any fiduciary duties with respect to deposits held for accounts shall be as provided by the instruments and laws applicable to those accounts.

(g) Subject to any limitations contained in this Article, an authorized trust institution is a "trust company", a "corporate trustee", a "corporate fiduciary", and a "corporation acting in a fiduciary capacity", as such and similar terms are used in the General Statutes, except where it clearly appears from the context in which those terms are used that a different meaning is intended. (2001-263, s. 1; 2012-56, s. 31; 2013-29, s. 22.)

**§ 53-367. Commissioner shall have supervision over authorized trust institutions and shall examine.**

Every authorized trust institution shall be under the supervision of the Commissioner. The Commissioner may periodically examine and require reports from authorized trust institutions, and shall execute and enforce, through examiners and any other agents as are now or may hereafter be created or appointed, all laws and all rules, orders, and declaratory rulings relating to authorized trust institutions. All authorized trust institutions shall conduct their business in a manner consistent with all laws and all rules, orders, and declaratory rulings that may be adopted or issued by the Commissioner relating to authorized trust institutions. (2001-263, s. 1.)

**§ 53-368. Assessment of State trust companies.**

(a) For the purpose of operating and maintaining the office of the Commissioner, each State trust company shall pay into the office of the Commissioner, within 10 days after notice, an annual assessment of ten thousand dollars (\$10,000) plus one dollar (\$1.00) per one hundred thousand dollars (\$100,000) of assets held for its accounts, exclusive of nonsecuritized real estate interests. For purposes of this assessment, the amount of assets held for accounts shall be determined as of the close of business on December 31 of each year.

(b) If an application for merger, share exchange, sale of assets, change of control, conversion, or a similar transaction occasions an examination or if the Commissioner determines that the financial condition or manner of operation of a State trust company warrants further examination or an increased level of supervision, a State trust company may be subject to an additional assessment not to exceed the amount required of all State trust companies by subsection (a) of this section.

(c) Repealed by Session Laws 2012-56, s. 32, effective October 1, 2012. (2001-263, s. 1; 2007-55, s. 2; 2012-56, s. 32.)

**Subpart B. Enforcement Orders; Trust Company Management.**

**§ 53-369. Administrative orders; penalties for violation; increase of equity capital.**

(a) In addition to any other powers conferred by this Chapter, the Commissioner may:

- (1) Order any authorized trust institution, or affiliate thereof, or any director, officer, or employee of an authorized trust institution, to cease and desist violating any provision of this Article or any rule issued thereunder.
- (2) Order any authorized trust institution, or affiliate thereof, or any director, officer, or employee of an authorized trust institution, to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of the assets of an authorized trust institution, or is likely to jeopardize or otherwise seriously prejudice the interests of the clients, creditors, shareholders, or the public in their relationships with the authorized trust institution.
- (3) Order any company to cease engaging in unauthorized trust activity.
- (4) Enter orders described in G.S. 53-321, 53-327, and 53-343.

(b) The Commissioner may impose a civil money penalty of not more than one thousand dollars (\$1,000) for each violation of an order issued under subdivision (1) of subsection (a) of this section. The Commissioner may impose a civil money penalty of not more than five hundred dollars (\$500.00) per day for each violation of a cease and desist order issued under subdivision (2) or (3) of subsection (a) or this section. The clear proceeds of civil money penalties imposed

pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) The Commissioner may order that a State trust company in a hazardous condition increase its equity capital to a level that is adequate for the safe and sound conduct of its business. The order shall specify the period of time for meeting the requirement to increase equity capital, which period of time may be extended by further order of the Commissioner. (2001-263, s. 1.)

**§ 53-370. Notice and opportunity for hearing.**

Consistent with Chapter 150B of the General Statutes, notice and opportunity for hearing shall be provided before the Commissioner may act under the provisions of this Subpart. In cases involving extraordinary circumstances requiring immediate action, however, the Commissioner may take action without a hearing, but shall promptly afford a subsequent hearing upon request to rescind the action taken. (2001-263, s. 1.)

**§ 53-371. Removal of directors, officers, and employees.**

The Commissioner may require the immediate removal from office of any officer, director, or employee of any State trust company, who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the State trust company, or who persistently violates the laws of this State or the rules, orders, and declaratory rulings issued by the Commissioner. (2001-263, s. 1.)

Part 5. Dissolution and Receivership; Conservatorship; Jeopardized State Trust Companies.

Subpart A. Voluntary Dissolution and Liquidation.

**§ 53-372. Required vote of shareholders.**

With the approval of the Commissioner, a State trust company may go into voluntary liquidation, be closed, and surrender its charter and franchise as a corporation of this State by the affirmative vote of its shareholders owning two-thirds of its stock. (2001-263, s. 1.)

**§ 53-373. Corporate procedure.**

Shareholder action to liquidate a State trust company shall be taken at a meeting of the shareholders duly called by resolution of the board of directors. Notice of the meeting, stating the purpose of the meeting, shall be mailed to each shareholder, addressed to the shareholder's last known residence at least 10 days prior to the date of the meeting. If the shareholders, by the required vote, elect to liquidate a trust company, a certified copy of all proceedings of the meeting at which the action was taken, verified by the oath of the president and secretary, shall be transmitted to the Commissioner for approval. (2001-263, s. 1.)

**§ 53-374. Authority to liquidate; publication.**

If the Commissioner approves the liquidation, the Commissioner shall issue to the State trust company, under the Commissioner's seal, a permit for liquidation. No permit shall be issued by the Commissioner until the Commissioner is satisfied that provision has been made by the State trust company to satisfy and pay off all creditors and to transfer all client accounts and fiduciary records to successor fiduciaries in the manner provided by G.S. 53-383(c). If not so satisfied, the Commissioner shall refuse to issue a permit, and shall be authorized to take possession of the State trust company and its assets and business and to hold and liquidate the State trust company in the manner provided in this Part. When the Commissioner approves the voluntary liquidation of a

State trust company, the directors of the State trust company shall notify clients of the State trust company in the manner prescribed by the Commissioner and shall cause to be published in a newspaper in the county in which the principal office of the trust company is located, or if no newspaper is published in that county, then in a newspaper having a general circulation in that county, a notice that the State trust company is closing down its affairs and going into liquidation and that creditors of the State trust company shall present their claims for payment. The notice shall be published once a week for four consecutive weeks. (2001-263, s. 1.)

**§ 53-375. Examination and reports.**

When any State trust company is in the process of voluntary liquidation, it shall be subject to examination by the Commissioner and shall furnish any reports required by the Commissioner. (2001-263, s. 1.)

**§ 53-376. Unclaimed property.**

All unclaimed property remaining with a State trust company voluntarily liquidated under the provisions of this Subpart shall be subject to the provisions of Chapter 116B of the General Statutes. (2001-263, s. 1.)

Subpart B. Seizure by Commissioner; Involuntary Dissolution and Liquidation.

**§ 53-377. When Commissioner may take charge.**

The Commissioner may take possession of the business and property of any State trust company whenever it appears that the trust company:

- (1) Is in a hazardous condition;
- (2) Has become insolvent or is in substantial danger of becoming insolvent;
- (3) Has sold or attempted to sell substantially all of its assets or has merged or attempted to merge its business with another entity without meeting the requirements of this Article;
- (4) Has dissolved or liquidated or attempted to dissolve or liquidate without meeting the requirements of this Article; or
- (5) Has suspended operations. (2001-263, s. 1.)

**§ 53-378. Directors may act.**

A State trust company may place its assets and business under the control of the Commissioner by a resolution of a majority of its directors upon notice to the Commissioner, and, upon taking possession of the State trust company, the Commissioner shall retain possession thereof until the State trust company is authorized by the Commissioner to resume business or until the affairs of the State trust company are fully liquidated as provided in this Subpart. No State trust company shall make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the Commissioner as provided in this Subpart; and any other purported general assignment for the benefit of creditors by a State trust company shall be void. (2001-263, s. 1.)

**§ 53-379. Notice of seizure; bar to attachment of liens.**

When the Commissioner takes possession of any State trust company under G.S. 53-377 or G.S. 53-378, the Commissioner shall, within 48 hours, file with the clerk of the superior court in the county where the principal office of the State trust company is located a notice of the action which shall state the reason for the action, and which shall be deemed the equivalent of a summons

and complaint against the State trust company in an action in the superior court except that it shall not be necessary to serve the notice. The taking possession of any State trust company shall be effective on the date when the authority is first exercised and from and after that time all assets and property of the State trust company, of whatever nature, shall be deemed to be in possession of the Commissioner, and the exercise of the authority shall operate as a bar to any attachment or other legal proceeding against the State trust company or its assets. After the Commissioner's exercise of authority, no lien shall attach in any manner binding or affecting any of the assets of the State trust company, and every purported transfer or assignment made thereafter by the State trust company, or by its authority, of the whole or any part of its assets, shall be null and void; and the Commissioner shall be substituted in place of the State trust company in any civil actions or proceedings pending at the time of the exercise of the authority. (2001-263, s. 1.)

**§ 53-380. Notice to trust institutions, corporations, and others holding assets; existing liens.**

Upon taking possession of the assets and business of any State trust company, the Commissioner shall forthwith give notice, by mail or otherwise, of the action to all banks, clearing corporations, brokers, trust institutions, or other persons or corporations holding, or having in possession, any assets of the State trust company. No lien against any assets of the State trust company shall be enforced in any manner other than as provided in this Article after the Commissioner has taken possession of the State trust company. (2001-263, s. 1.)

**§ 53-381. Permission to resume business.**

(a) After the Commissioner has taken possession of a State trust company under the provisions of this Subpart, the State trust company may resume business only upon approval and subject to terms and conditions specified by the Commissioner.

(b) When possession of a State trust company has been taken pursuant to either G.S. 53-377 or G.S. 53-378, the terms and conditions under which it may resume business shall be fully stated in writing, and a copy thereof shall be filed with the clerk of superior court of the county in which the action is pending.

(c) Notwithstanding subsections (a) and (b) of this section, no State trust company possessed by the Commissioner under the provisions of this Article shall resume trust business unless and until the State trust company has been completely restored to solvency and it clearly appears to the Commissioner that the State trust company may be reopened with safety to the clients, creditors, and shareholders of the State trust company and to the public.

(d) If the Commissioner determines that the State trust company shall not resume business, the State trust company shall be liquidated in accordance with the provisions of this Part and shall cancel the charter and revoke the license of the State trust company as provided in G.S. 53-414. (2001-263, s. 1.)

**§ 53-382. Remedy for seizure; answer to notice; injunction; appeal; and motions.**

(a) Whenever any State trust company of which the Commissioner has taken possession under G.S. 53-377 shall deem itself aggrieved thereby, it may file an answer to the notice as in other civil actions and may also, upon notice to the Commissioner, apply to the resident or presiding judge of the superior court for an injunction to enjoin further proceedings by the Commissioner. The judge of the superior court may cite the Commissioner to show cause why further proceedings should not be enjoined and, after hearing the allegations and proof of the parties with respect to the condition of the State trust company, may dismiss an application for

injunction or may enjoin further proceedings under the provisions of this section by the Commissioner. If the judge enjoins further action of the Commissioner and permits the reopening of the State trust company, the judge may require of the State trust company a surety bond as the judge deems necessary, payable to the Commissioner for the sole benefit of the creditors and clients of the State trust company and upon any terms the judge deems proper. Either party has the right to appeal a decision as in other civil actions.

(b) The State trust company or any person interested may be heard by motion as to actions taken or proposed to be taken by the Commissioner, but the judge hearing the motion shall enter an order as in the judge's discretion will best serve the parties interested. (2001-263, s. 1.)

**§ 53-383. Collection of debts and claims; Commissioner succeeds to all property of the State trust company.**

(a) Upon taking possession of the assets and business of any State trust company, the Commissioner is authorized to collect all money due the State trust company and to do any other acts necessary to conserve its assets and property. The Commissioner shall collect all debts due and claims belonging to the State trust company, and by order of the court may sell, compromise, or compound any bad or doubtful debt or claim or sell the real and personal property of the State trust company on any terms provided by the order. Where the sale is made under power contained in any mortgage or lien bond or other paper wherein the title is retained for sale and the terms of sale set out, sale may be made under that authority.

(b) Upon taking possession of any State trust company under the provisions of this section, the Commissioner shall have the possession and the right to the possession of all the property, assets, choses in action, rights, and privileges of the State trust company. The property rights and privileges shall vest in the Commissioner absolutely for the purpose of liquidating, selling, or conveying the property rights and privileges, together with all other incidental rights, privileges, and powers necessary for the right of conveyance and sale.

(c) Upon taking possession of any State trust company under the provisions of this section, the Commissioner shall administer each account of the State trust company on a temporary basis until either (i) a successor to the State trust company is appointed or the account is terminated in the manner provided by the terms of its governing instrument consistent with applicable law, or by applicable law in the absence of a provision in the governing instrument, or (ii) the Commissioner has granted the State trust company permission to resume business under the provisions of G.S. 53-381. The Commissioner may take appropriate steps for the appointment of successors or termination of accounts as the Commissioner deems necessary as to some or all of the accounts of the State trust company. If the governing instrument or other applicable law do not prescribe methods for appointing successors, or if the methods prescribed are unfeasible, the applicable law for appointment of a successor shall be as set forth in G.S. 53-399.

(d) The officers and directors of any State trust company that is in the possession of the Commissioner under this Part shall not exercise any powers declared by this Subpart to be vested in the Commissioner. (2001-263, s. 1.)

**§ 53-384. Bond of the Commissioner; surety; condition; minimum penalty.**

Upon taking possession of any State trust company, the Commissioner shall execute and file a bond payable to this State for the benefit of creditors, clients, and shareholders of the State trust company, with some surety company as surety thereon, with the clerk of the superior court of the county in which the action is pending, conditioned upon the faithful performance of all duties



imposed upon the Commissioner under the provisions of this Subpart with respect to the State trust company, the penal sum of the bond to be fixed by order of the Commissioner, which in no case shall be less than two hundred fifty thousand dollars (\$250,000). Any person interested, by motion in the pending action, shall be heard by the resident or presiding judge of the superior court as to the sufficiency of the bond. The judge hearing the motion may fix the bond. (2001-263, s. 1.)

**§ 53-385. Inventory.**

Within 90 days after the filing of a notice described in G.S. 53-379, the Commissioner shall file an inventory of the assets and liabilities, not including assets and liabilities held in accounts of the State trust company, of the State trust company. A copy of the inventory shall be filed with the clerk of the superior court of the county in which the action is pending, and a copy shall be kept on file with the State trust company. The inventory shall be open for inspection during usual business hours, provided that nothing herein shall require the State trust company to remain open unnecessarily. (2001-263, s. 1; 2012-56, s. 33.)

**§ 53-386. Notice and time for filing claims.**

Notice shall be given by advertisement once a week for four consecutive weeks in a newspaper published in the county where the principal office of the State trust company is located, or if no newspaper is published in the county, then in some newspaper having a general circulation in the county, calling on all persons who may have claims against the State trust company to present them to the Commissioner at the principal office of the State trust company, and within the time to be specified in the notice which time shall not be less than 90 days from the date of the first publication. A copy of this notice shall be mailed to all persons whose names appear as creditors upon the books of the State trust company. Affidavit by the Commissioner to the effect that the notice was mailed shall be conclusive evidence thereof. For purposes of this section, clients and accounts of the State trust company shall not be considered creditors of the State trust company as to the assets held by the State trust company for the benefit of its accounts. (2001-263, s. 1.)

**§ 53-387. Power to reject claims; notice; affidavit of service; action on claims.**

If the Commissioner doubts the validity of any claim, the Commissioner may reject the claim, in whole or in part, and serve notice of the rejection upon the claimant, either personally or by certified mail, and an affidavit of the service of the notice shall be filed in the office of the clerk of the superior court of the county in which the action is pending and shall be conclusive evidence of the notice. Any action or suit upon a rejected claim shall be brought by the claimant against the Commissioner in the superior court of the county in which the action is pending within 90 days after service, or the action or suit shall be barred. Objections to any claim not rejected by the Commissioner may be made by any person interested by filing the objection in the pending action and by serving a copy thereof on the Commissioner. The Commissioner, after investigation, shall either allow the objection and reject the claim, or disallow the objection. If the objection is not allowed and the claim is not rejected, the Commissioner shall file a notice in the pending action and serve the notice upon the person making the claim and the person objecting to the claim. Within 10 days after the notice is filed, the person filing objection by motion in the pending action may question the validity of the claim, and the questions of law and issues of fact shall thereupon be determined as in other civil actions. (2001-263, s. 1.)

**§ 53-388. List of claims presented, copies, and proviso.**

Upon the expiration of the time fixed for presentation of claims, the Commissioner shall make a full and complete list of the claims presented, including and specifying any claims that have been rejected. One copy shall be filed in the office of the clerk of the superior court of the county in which the action is pending, and one copy shall be kept on file with the inventory in the principal office of the State trust company for examination. Any indebtedness against any State trust company which has been established or recognized as a valid liability of the State trust company before it went into liquidation, for which no claimant has filed claim, or any liability for which a claim has been filed and rejected, shall be listed by the Commissioner in the office of the clerk of the superior court of the county in which the action is pending. Any claim that may be presented after the expiration of the time fixed for the presentation of claims in the notice provided in G.S. 53-386 shall, if allowed, share pro rata in the distribution but only as to those assets of the State trust company in the hands of the Commissioner that are undistributed at the time the claim is presented. (2001-263, s. 1.)

**§ 53-389. Declaration of dividends; order of preference in distribution.**

(a) At any time after the expiration of the date fixed by the Commissioner for the presentation of claims against the State trust company, and from time to time thereafter, the Commissioner may declare and pay dividends to the creditors and shareholders of the State trust company. In paying and calculating dividends, all disputed claims shall be taken into account, but no dividend shall be paid upon the disputed claims until the claims have been finally determined. The following shall be the order of preference in the distribution of the assets of any State trust company liquidated hereunder:

- (1) State, county, and federal taxes owed and fees due the Commissioner other than those due under the provisions of this Subpart;
- (2) Wages and salaries due officers and employees of the State trust company for a period of not more than four months;
- (3) Expenses of liquidation, including those described in G.S. 53-391 and G.S. 53-395;
- (4) Amounts due creditors, honoring the priorities of valid security interests and subject to orders of the court concerning disputes among creditors;
- (5) Amounts due shareholders.

(b) A statement of all dividends paid shall be filed in the office of the clerk of the superior court of the county in which the action is pending, and the statements shall show the expenses deducted and the disputed claims in determining dividends. (2001-263, s. 1.)

**§ 53-390. Deposit of funds collected.**

All funds collected by the Commissioner, in liquidating any State trust company, shall be deposited from time to time in a bank as may be selected by the Commissioner and shall be subject to withdrawal by check of the Commissioner. (2001-263, s. 1.)

**§ 53-391. Employment of counsel, accountants, and other experts; compensation.**

The Commissioner, for the purpose of exercising any power under the provisions of this Subpart, may (i) employ any liquidating agents, attorneys, accountants, consultants, and clerks necessary to properly conduct the business of or liquidate and distribute the assets of a State trust company; (ii) fix the compensation for the agents, attorneys, accountants, consultants, and clerks; and (iii) pay the compensation of those persons out of the assets of the State trust company.

Provided, that all expenditures described in this section shall be approved by the resident or presiding judge in the county in which the action is pending. Payments made by the Commissioner pursuant to this section shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes. As used in this Subpart, the term "Commissioner" includes the Commissioner's duly appointed agents. The Commissioner shall: (i) submit all proposed agreements or contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the Commissioner under this section a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during and after the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose. (2001-263, s. 1; 2010-194, s. 4; 2011-326, s. 15(d).)

**§ 53-392. Unclaimed dividends held in trust.**

Unclaimed dividends for claims described in subdivisions (a)(1) through (a)(4) of G.S. 53-389 shall be held by the Commissioner in trust for the claimants to whom the dividends are owed; and the dividends so held by the Commissioner shall be paid over to the persons entitled to the dividends when they furnish satisfactory evidence of their right to the dividends. In case of doubtful or conflicting claims, the Commissioner may apply to the superior court, by motion in the pending action, for an order from the resident or presiding judge of the superior court directing the payment of the dividends so claimed. Issues of fact raised by motion may, upon request of any claimant, be determined as in other civil actions. Interest earned on any unclaimed dividends so held shall be applied toward defraying the expenses incurred in the distribution of the unclaimed dividends. The balance of interest, if any, shall be deposited and held as other funds to the credit of the Commissioner. After the Commissioner has held any unclaimed dividends in trust under the provisions of this statute for the creditors of the liquidated State trust company for a period of three years following the resumption of business by or cancellation of the charter of the State trust company, the unclaimed dividends shall be subject to the provisions of Chapter 116B of the General Statutes. Upon payment of unclaimed dividends to the State Treasurer, the Commissioner shall be fully discharged from all further liability therefor. (2001-263, s. 1.)

**§ 53-393. Action by the Commissioner following full settlement.**

Whenever the Commissioner has paid all duly proven and allowed claims described in subdivisions (a)(1) through (a)(4) of G.S. 53-389, has made proper provision for unclaimed and unpaid and disputed claims, and has other assets of the State trust company, the Commissioner shall, unless the State trust company is granted permission to resume business in accordance with G.S. 53-381, call a meeting of the shareholders of the State trust company by giving notice thereof by publication once a week for four consecutive weeks in a newspaper published in the county, or if no newspaper is published in the county, then in a newspaper having general circulation in the county, and by mailing a copy of the notice to each shareholder's address as it appears on the books of the State trust company. Affidavit of the mailing of the notice herein required and of the newspaper as to the publication shall be conclusive evidence of notice hereunder. At the meeting, any shareholders may be represented by proxy and the shareholders shall elect, by a majority vote of the shares present, an agent or agents who shall be authorized to receive from the Commissioner all the remaining assets of the State trust company. The shareholders also may specify the means

of resolving disputes between multiple agents and appointing successors to the agent or agents. The Commissioner shall cause to be transferred and delivered to the agent, or agents, all the remaining assets of the State trust company. The Commissioner shall thereupon cause to be filed in the office of the clerk of the superior court of the county in which the action is pending a full and complete report of all transactions showing the assets of the State trust company so transferred together with the name of the agent or agents giving receipt for the assets; and the filing of the report shall act as a full and complete discharge of the Commissioner from all further liabilities to the shareholders of the State trust company by reason of the liquidation of the State trust company. The agent shall convert the assets coming into the agent's hands into cash, except as otherwise provided by the court upon motion in the cause made by a shareholder of the State trust company, and shall make distribution to the shareholders of the State trust company as herein provided. The agent shall file semiannually a report of all transactions with the superior court of the county in which the State trust company is located, and with the Commissioner, and shall be allowed for the services such fees, not in excess of five percent (5%) of receipts and disbursements, as may be fixed by the court. In case of death, removal, or refusal to act of any agent or agents elected by the shareholders, the Commissioner or any interested person may seek an order from the resident or presiding judge in the county in which the action is pending appointing a successor to the agent or agents as determined by the shareholders or, if no method was set forth by the shareholders, as determined by the court to be in the best interests of the shareholders. The court in its discretion may either appoint a successor or order the call of a further meeting of shareholders for the election of a successor and make any orders that are appropriate. (2001-263, s. 1.)

**§ 53-394. Annual report of the Commissioner; items included; reports of condition of State trust companies.**

(a) The Commissioner shall file, as a part of an annual report to the Governor, a list of the names of any State trust companies of which possession was taken and liquidated in the preceding year, the sum of unclaimed assets with respect to each State trust company, and all depositories of all sums coming into the hands of the Commissioner under the provisions of this Part.

(b) The Commissioner shall, from time to time, compile and make available for public inspection reports showing the condition of State trust companies. (2001-263, s. 1.)

**§ 53-395. Compensation of the Commissioner's office.**

The office of the Commissioner, for services rendered in connection with the duties described in this Subpart, shall be entitled to actual expenses incurred in connection with the liquidation of each State trust company, including a reasonable sum for the time of the examiners and other agents of the Commissioner. The Commissioner may adopt rules or orders for fixing these expenses. (2001-263, s. 1.)

**§ 53-396. Exclusive method of liquidation.**

No State trust company shall be liquidated other than as provided in this Part. (2001-263, s. 1.)

**§ 53-397. Disposition of books and records.**

All fiduciary records relating to the administration of particular accounts shall be turned over to the successors in charge of administration of the accounts. All other books, papers, and records of a State trust company that has been finally liquidated shall be deposited by the receiver in the office of the clerk of the superior court of the county in which the action is pending, or in any other

place as in the clerk's judgment, after consultation with the Commissioner, will provide for the proper safekeeping and protection of those books, papers, and records. Such books, papers, and records shall be held subject to the orders of the clerk of the superior court of the county in which the action is pending, including orders necessary for preserving the confidentiality of any information relating to accounts contained in those books, papers, and records. (2001-263, s. 1.)

**§ 53-398. Destruction of books and records.**

(a) After the expiration of five years from the date of filing, in the office of the clerk of the superior court of the county in which the action is pending, of a final order approving the liquidation of a State trust company and the delivery to the clerk or into the clerk's custody of books, papers, records of the State trust company, the books, papers, and records may be destroyed by the clerk of the superior court of the county in which the action is pending.

(b) After five years from the filing by the Commissioner of a final report of liquidation of any insolvent State trust company, the Commissioner, by and with the consent of the Commission, may destroy the records of any State trust company held in the office of the Commissioner in connection with the liquidation of the State trust company. However, in connection with any unpaid dividends, the Commissioner shall preserve the records or other evidence of indebtedness of the State trust company with reference to the unpaid dividends until the dividends have been paid.

(c) Nothing in this section shall be construed to authorize the destruction by the clerk of superior court of any county or by the Commissioner of any of the formal records of liquidation or the records made in the office of the Commissioner with reference to the liquidation. (2001-263, s. 1.)

**§ 53-399. Petition for new trustee.**

Any person interested in any account, either as trustee, beneficiary, client, or otherwise, may petition the clerk of superior court of the county in which court accountings are filed or, if there is no such county, the county in which the account is being administered, for a new trustee or other successor to a State trust company in all cases in which use of the procedures set forth in this Part are employed. The petition and the order appointing a new trustee or other successor may relate to any number of accounts administered by the State trust company. Except as specified in this section, the procedure shall be as provided in Chapter 36A of the General Statutes for the appointment of successor trustees. (2001-263, s. 1.)

**§ 53-400. Report to the Secretary of State.**

The Commissioner shall, on or before the first day of each year, file with the Secretary of State a report showing any State trust companies under liquidation in this State and the names of any auditors or attorneys employed in connection with the liquidation of these State trust companies, together with the amounts paid or contracted to be paid to each of the auditors or attorneys. If any attorney has been employed on a fee contingent upon recovery, the report shall set forth the material terms of the fee arrangements. (2001-263, s. 1.)

=cx=ctC=sph Conservatorship.

**Subpart C. Conservatorship.**

**§ 53-401. Provisions for conservator; duties and powers.**

Whenever the Commissioner deems it necessary in order to conserve the assets of a State trust company for the benefit of clients or creditors, the Commissioner may appoint a conservator for the State trust company and require of the conservator a bond with any surety the Commissioner deems necessary and proper in an amount deemed sufficient by the Commissioner. The conservator, under the direction of the Commissioner, shall take possession of the fiduciary records and other books, records, and assets of every description of the State trust company placed under conservatorship and take actions necessary to conserve those assets pending further disposition of its business as provided by law. Except as provided in G.S. 53-405, the conservator shall have all rights, powers, and privileges, subject to the approval of the Commissioner, now possessed by or given to the Commissioner under the provisions of Subpart B and Subpart D of this Part. All expenses of the conservator shall be paid out of the assets of the State trust company under conservatorship and shall be a lien thereon which shall be prior to any other lien provided by law. The compensation of the conservator shall be determined by the Commissioner and shall be based on the time and experience of the conservator and the complexity of the conservatorship. Compensation of the conservator shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall: (i) submit all proposed agreements or contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the Commissioner under this section a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the conservator during and after the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose. (2001-263, s. 1; 2010-194, s. 5; 2011-326, s. 15(e).)

#### **§ 53-402. Examination.**

The Commissioner shall examine the affairs of a State trust company placed under conservatorship in the manner deemed necessary by the Commissioner to oversee the conservatorship. (2001-263, s. 1.)

#### **§ 53-403. Termination of conservatorship.**

If the Commissioner is satisfied that the conservatorship may be terminated with safety to the clients, creditors, and shareholders of the State trust company, and to the public, the Commissioner may terminate the conservatorship of a State trust company and permit the company to resume the transaction of its business, subject to such terms, conditions, restrictions, and limitations as the Commissioner prescribes. (2001-263, s. 1.)

#### **§ 53-404. Rights and liabilities of conservator.**

A conservator appointed pursuant to the provisions of this Subpart is subject to the provisions of G.S. 53-331 and to the penalties prescribed by G.S. 53-129 and G.S. 53-355. (2001-263, s. 1.)

#### **§ 53-405. Naming of conservator not liquidation.**

No power conferred in this Subpart upon the Commissioner, when exercised, shall be deemed as an act of possession for the purposes of liquidation; and whenever the Commissioner shall, with reference to any State trust company for which a conservator is appointed, deem that liquidation

is necessary, the Commissioner shall exercise the powers for the purposes of liquidation as provided in Subpart B of Part 5 of this Article. (2001-263, s. 1.)

Subpart D. Sale of Assets; Issuance of Preferred Stock by Jeopardized State Trust Company.

**§ 53-406. Sale of assets by board of jeopardized State trust company.**

(a) With the Commissioner's approval, the board of directors of a jeopardized State trust company, acting without shareholder approval and notwithstanding any other provision of this Article or any other law, or any of the provisions of the articles of incorporation or bylaws of the State trust company, may cause the State trust company to sell to one or more buyers all or substantially all of its assets, including the right to control and act as fiduciary for accounts established with the trust company, if the Commissioner finds:

- (1) The interests of the State trust company's clients, creditors, and shareholders are jeopardized by the continued operation of the State trust company; and
- (2) The sale is in the best interests of the State trust company's clients and creditors.

(b) Sales under the provisions of this section shall include assumptions and promises by one or more buyers to pay or otherwise discharge, except as provided in G.S. 53-407:

- (1) All of the State trust company's liabilities to clients and creditors;
- (2) All of the State trust company's liabilities for salaries of the State trust company's employees incurred before the date of the sale;
- (3) Expenses incurred by the Commissioner arising out of the supervision or sale of the State trust company; and
- (4) Taxes owed and fees and assessments due the Commissioner's office.

(c) This section does not limit the power of a State trust company to buy and sell assets in the ordinary course of business.

(d) This section does not affect the Commissioner's right to take action under another law or sale under other provisions of this Article. (2001-263, s. 1.)

**§ 53-407. Authority to act as disbursing agent.**

If a purchasing trust institution acts under a written agency contract that (i) is approved by the Commissioner; (ii) specifically names each creditor and the amount to be paid each; and (iii) limits the agency to the purely ministerial act of paying creditors the amounts due them as determined by the selling institution and does not involve discretionary duties or authority other than the identification of the creditors named, then the purchasing trust institution:

- (1) May rely on the contract of agency and the instructions included in it; and
- (2) Is not responsible for:
  - a. Any error made by the selling institution in determining its liabilities, the creditors to whom the liabilities are due, or the amounts due the creditors; or
  - b. Any preference that results from the payments made under the contract of agency and the instructions included in it. (2001-263, s. 1.)

**§ 53-408. Payment to creditors.**

Payment to a creditor of the selling institution of the amount to be paid under the terms of a contract of agency described in G.S. 53-407 may be made by the purchasing trust company by (i) opening an agency account in the name of the creditor; (ii) crediting the account with the amount to be paid the creditor under the terms of the agency contract; and (iii) mailing or personally

delivering a duplicate ticket evidencing the credit to the creditor at the creditor's address shown in the records of the selling institution. (2001-263, s. 1.)

**§ 53-409. Issuance of preferred shares by jeopardized trust company.**

Notwithstanding any other provisions of this Article or any other laws, and notwithstanding any of the provisions of its articles of incorporation or bylaws, any jeopardized State trust company may, with the approval of the Commissioner, and by vote of shareholders owning a majority of the shares of such State trust company, upon not less than two days' notice given by registered mail pursuant to action taken at a meeting of its board of directors (which may be held upon not less than one day's notice) issue shares of preferred stock in such amount, with such voting rights, with such preferences, at such dividend rate, and with such other rights and limitations as shall be approved by the Commissioner. A copy of the minutes of such directors' and shareholders' meetings, certified by the proper officer and under the corporate seal of the State trust company, and accompanied by the written approval of the Commissioner, shall be immediately filed in the office of the Secretary of State, and when so filed, shall be deemed and treated as an amendment to the articles of incorporation of such State trust company. For purposes of this section, a State trust company shall be considered jeopardized when it is critical that the State trust company obtain additional equity capital to avoid, or to cease to be in, a hazardous condition, and other means of raising additional equity capital do not appear to be feasible. No issue of preferred shares shall be valid until the amount of all shares so issued shall have been paid for in full in cash, except as may otherwise be specifically approved by the Commissioner. The provisions of this section do not limit the authority of a State trust company to issue shares as provided under other applicable law. (2001-263, s. 1.)

Part 6. Authority, Hearings, Enforcement, and Severability.

**§ 53-410. Commissioner to act under authority of the Commission.**

All the powers, duties, and functions granted to or imposed upon the Commissioner by law shall be exercised under the direction and supervision of the Commission. Wherever provision is made in this Article authorizing and permitting the Commissioner to make rules, the words "the Commissioner" shall be construed to mean the Commission. (2001-263, s. 1.)

**§ 53-411. Rules.**

The Commission may adopt rules in accordance with Chapter 150B of the General Statutes to carry out the provisions of this Article relating to authorized trust institutions and to ensure safe and conservative management of authorized trust institutions under its supervision, taking into consideration the appropriate interests of the clients, creditors, shareholders, and the public in their relations with the authorized trust institutions. (2001-263, s. 1.)

**§ 53-412. Commissioner hearings; appeals.**

(a) This section does not grant a right to a hearing to a person that is not otherwise granted by governing law.

(b) The Commissioner may convene a hearing to receive evidence and argument regarding any matter before the Commissioner for decision or review under the provisions of this Article. The hearing shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.



(c) Disputes over decisions and actions of the Commissioner under the provisions of this Article shall be "contested cases" as defined in G.S. 150B-2(2).

(d) Except as expressly provided otherwise by this Chapter, an order of the Commissioner may be appealed, in writing, to the Commission for review, pursuant to G.S. 53C-2-6. The Commission may affirm, modify, or reverse a decision of the Commissioner.

(e) Petitions for judicial review from the Commission shall be made to the Wake County Superior Court and shall proceed as provided in G.S. 53C-2-6. (2001-263, s. 1; 2009-57, s. 11; 2012-56, s. 34.)

**§ 53-413. Civil enforcement.**

The Commissioner may bring any appropriate civil action against any person the Commissioner believes has committed or is about to commit a violation of this Article or a rule, order, or declaratory ruling of the Commissioner pertaining to this Article. (2001-263, s. 1.)

**§ 53-414. Cancellation of charter.**

Whenever a merger, share exchange, sale of assets, liquidation, or other transaction occurs by which a State trust company ceases to exist or ceases to be eligible for a charter, the Commissioner shall cancel the State trust company's charter, revoke its license, and provide notice of the revocation in the manner provided in G.S. 53-163. The filing, in the office of the Secretary of State, of a certified copy of the cancellation under seal of the Commissioner shall authorize the cancellation of the charter of the State trust company, subject, however, to its continued existence, as provided by this Article and the general law relative to corporations, for the purpose of winding up and liquidating its business and affairs. (2001-263, s. 1.)

**§ 53-415. Severability.**

If any provision of this Article, or its application, is found by any court of competent jurisdiction in the United States to be invalid as to any trust institution or other person or circumstance, or to be superseded by federal law, the provision shall be deemed modified only to the extent and only in the particular circumstances necessary to render the provision valid, and the remaining provisions of this Article shall not be affected and shall continue to apply to any trust institution or other person or circumstance. (2001-263, s. 1.)

**§ 53-416. Reserved for future codification purposes.**

**§ 53-417. Reserved for future codification purposes.**

**§ 53-418. Reserved for future codification purposes.**

**§ 53-419. Reserved for future codification purposes.**

**Part 7. Affiliate Transfers; Agent Appointments.**

**§ 53-420. Affiliate transfers authorized; procedure.**

(a) A trust institution may make an affiliate transfer of one or more accounts subject to the provisions of this Part unless the provisions governing the account explicitly provide that an affiliate transfer shall not be made.

(b) The affiliate transfer shall be made pursuant to a written agreement between the transferring trust institution and the transferee trust institution.

(c) Between 90 and 30 days prior to the proposed date of the affiliate transfer, the transferring trust institution shall give written notice of the proposed affiliate transfer to all clients and other persons to whom the transferring trust institution last sent reports or statements for the account or to whom the next regular report or statement would be sent. The notice shall include the following information:

- (1) A brief description of the proposed affiliate transfer.
- (2) The client's right to object in writing to the affiliate transfer, and the physical and mailing addresses to which the written objection may be sent; the transferring trust institution also may provide electronic mail or facsimile addresses, or both, as additional methods for giving written notice of objection.
- (3) The date upon which the affiliate transfer is proposed to be effective.
- (4) The identity, mailing address, and telephone number of one or more employees of the transferee trust institution who can respond to inquiries if the affiliate transfer is complete.
- (5) The identity, mailing address, and telephone number of one or more employees of the transferring trust institution who can respond to inquiries about the proposed affiliate transfer.

(d) Notices shall be sent to the addresses for clients or their representatives on record with the transferring trust institution and shall be effective upon receipt. Notices shall be deemed received three days after they have been posted for mailing with the United States Postal Service or deposited for delivery with a reputable courier service, with all postage or delivery charges prepaid. (2005-274, s. 2.)

#### **§ 53-421. Objection to affiliate transfer.**

If a client, or a person acting on behalf of the client, delivers a written objection to the affiliate transfer to the transferring trust institution at anytime prior to the date of the affiliate transfer, the transferring trust institution shall exclude that account from the affiliate transfer unless the objection is withdrawn. An objection to an affiliate transfer shall not affect the right of the transferring trust institution to continue to administer the account or to seek to transfer the account pursuant to the documents and law governing the account. (2005-274, s. 2.)

#### **§ 53-422. Effect of affiliate transfer.**

(a) Following an affiliate transfer, the transferee trust institution shall have all of the rights, powers, privileges, appointments, accounts, and designations of the transferring trust institution and shall be deemed successor to the transferring trust institution in any deed, trust, agreement, filing, instrument, notice, certificate, pleading, or other document related to the account.

(b) Following an affiliate transfer, the transferee trust institution is responsible for the performance of all duties, responsibilities, and obligations related to an account subject to the affiliate transfer.

(c) The affiliate transfer does not limit the transferring trust institution's liability for any of its acts as fiduciary.

(d) Unless the affiliate transfer is authorized by the documents governing the account, the transferring trust institution remains liable and responsible, while affiliated with the transferee trust institution, for the transferee trust institution's administration of accounts subject to an affiliate

transfer. For purposes of this subsection, an affiliate transfer of an account made in reliance on subsection (e) of this section shall not be deemed to be authorized by the documents governing the account.

(e) Except as explicitly provided in provisions or laws governing accounts:

- (1) Qualifications for administration such as capital, assets, assets under management, or similar standards set forth in documents or laws governing the account may be satisfied by the combined financial resources of the transferring trust institution and the transferee trust institution.
- (2) Standards relating to the location or charter of the trust institution administering the account may be satisfied by the transferring trust institution or the transferee trust institution.

(f) Nothing in this Part shall be construed to impair any right of a trust institution to resign from administration of an account, or the right of a trust institution or a person interested in the account to seek the appointment of a replacement.

(g) Neither the rights of creditors to nor any liens upon the property held in an account shall be impaired by an affiliate transfer.

(h) Any claim or proceeding by or against the transferring trust institution pending at the time of the affiliate transfer may proceed as if the affiliate transfer had not taken place. (2005-274, s. 2.)

#### **§ 53-423. Trust institution as agent.**

A trust institution may appoint another trust institution that is its affiliate as its agent for the performance of acts, obligations, and responsibilities with respect to any account. In that event, the trust institution shall remain fully responsible and liable with respect to all actions of the affiliated trust institution as if those actions were performed by the trust institution. Except as explicitly provided in documents or laws governing an account, appointment of an affiliate agent is not:

- (1) An impermissible delegation of responsibility or duty by the appointing trust institution.
- (2) A transfer or relinquishment of account powers by the appointing institution.
- (3) A resignation or disqualification from the account by the appointing trust institution. (2005-274, s. 2.)

#### **§ 53-424. Construction.**

(a) Except as expressly provided in this Part, nothing in this Part shall be construed to amend or modify the laws of this State governing the establishment or administration of accounts or the actions of trust institutions.

(b) An affiliate transfer is not, in itself, a transfer of substantially all of the transferring trust institution's assets and liabilities.

(c) Except as explicitly provided by the documents governing the account, neither an affiliate transfer nor an agency appointment under G.S. 53-423 shall be subject to any provision of law requiring court approval for removal of fiduciary funds from this State.

(d) Except as explicitly provided by the documents governing the account, an affiliate transfer, but not an agency appointment, shall be subject to any provision of law requiring notice of a transfer of the principal place of administration of the account. The manner or timing of a notice required under G.S. 53-420(c) may be altered to comport with any provision of law

requiring notice of a transfer of the principal place of administration of the account. (2005-274, ss. 2, 3.)